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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 390

OZARK BUTANE COMPANY, INC., APPELLANT,

v.

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED AUGUST 15, 1964

PROBABLE JURISDICTION NOTED OCTOBER 26, 1964

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF OKLAHOMA

Civ. 63-248

JACK GORUM, CHARLES GORUM and OZARK BUTANE COMPANY, INC., a corporation, Plaintiffs,

vs.

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD and W. D. RUSH, LIQUEFIED PETROLEUM GAS ADMINISTRATOR, Defendants.

COMPLAINT—Filed July 25, 1963

Come now the plaintiffs and respectfully show and represent to the court as follows:

That the plaintiff, Ozark Butane Company, Inc. is a corporation organized and existing under the laws of the State of Arkansas and is duly authorized to conduct business in the State of Oklahoma; that the plaintiffs, Jack Gorum and Charles Gorum are citizens of the State of Arkansas and are principal stockholders of the plaintiff Ozark Butane Company, Inc. The defendant Oklahoma Liquefied Petroleum Gas Board is an independent regulatory administrative body duly constituted and created by virtue of 52 O.S. 1961 420.3, as amended, to prescribe, adopt and promulgate rules and regulations relating to the liquefied petroleum gas industry in the State of Oklahoma. That the defendant W. D. Rush is the duly appointed and acting Liquefied Petroleum Gas Administrator empowered by virtue of the aforesaid statutes to act as Secretary of the Board and to administer and enforce the rules and regulations of the Board and to generally act as chief administrative officer for the Board. That the plaintiffs have, for approximately 17 years, been engaged in the wholesale and retail transportation, distribution, pur- and sale of liquefied petroleum gas to numerous cus-

tomers in the State of Oklahoma and the State of Arkansas and principally in the towns of Westville, Kansas, Stillwell and Colcord, in Oklahoma, and other towns situated in [fol. 2] the State of Arkansas; that the value of the plaintiffs' business which is situated in the State of Oklahoma is in excess of $10,000.00.

That for the duration of said business, and as required by applicable law, the plaintiff Ozark Butane Company, Inc. possessed a retail permit granted by the Liquefied Petroleum Gas Administrator for the State of Oklahoma authorizing said plaintiff to conduct and engage in the transportation and retailing of liquefied petroleum gas and the right to engage in the manufacture and/or assembly and sale of any apparatus to be used for the storage and/or dispensing of liquefied petroleum gas; that the plaintiffs, Jack Gorum and Charles Gorum, likewise have been possessed of individual permits to engage in the physical installation of liquefied petroleum gas systems and appliances; that the permit number of the plaintiff Ozark Butane Company, Inc. is 5207; the permit number of the plaintiff Jack Gorum is 1033 and the permit number of Charles Gorum is 1733. Each of the above described permits were issued for a period of one year and have always been renewed upon application to the Administrator; that all of said permits will expire at Midnight, August 31, 1963, unless sooner revoked.

That on or about the 26th day of March, 1963, the Legislature of the State of Oklahoma passed an Act officially designated as 52 O.S. 1961 420.14, but hereinafter designated as Senate Bill No. 122, which provides as follows:

"BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

Section 1. The State Liquefied Petroleum Gas Administrator shall not issue or renew any registration permit or license to any person, firm or corporation who is a resident of, or whose principal place of business is located in, a state other than Oklahoma unless the laws of such other state, and the rules and regulations of the authority governing the transportation, storage and dispensing of liquefied petroleum gas permit the

operation of such business by citizens, firms or corporations of Oklahoma under the same or substantially similar terms and conditions as those required for such operation in this State.

Section 2. It being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this Act shall take effect and be in full force from and after its passage and approval."

[fol. 3] That subsequent to the passage of said Act, the plaintiffs, and each of them, did complete and file with the Liquefied Petroleum Gas Administrator, on the prescribed form, their applications to have their respective permits renewed for the ensuing year. That the defendants, acting under color of the above described law, refused to accept said applications. That without the issuance of said applications the plaintiffs will be deprived of the right to conduct their business in the State of Oklahoma, as they have for approximately 17 years, all of which will cause irreparable harm and damage to the plaintiffs.

That the above described Senate Bill No. 122 denies to the plaintiffs the privileges and immunities of the citizens of the several states, the equal protection of the laws and due process of law, all in violation of the Fourteenth Amendment to the Constitution of the United States and said Act, as applied to these plaintiffs, unreasonably interferes with, encumbers and prohibits interstate commerce and in its further application is arbitrary, discriminatory and unjust and not within the legitimate exercise of the police power of the State of Oklahoma.

That the plaintiffs request that a Statutory Three Judge Federal District Court be impaneled, without delay, for the purpose of entering a decree enjoining the enforcement, operation or execution of the above described Senate Bill No. 122 and declare the same to be unconstitutional and to restrain the defendants from enforcing or executing such statute which is specifically accomplished by denying the plaintiffs' application for their permit renewals based upon said Act and that the defendants be mandatorily

enjoined to renew the plaintiffs' permits for the ensuing year.

That pending the litigation of this question the plaintiffs' current permits are due to expire; that if said permits are allowed to expire the plaintiffs will be forced to cease their business operations within the State of Oklahoma and will be deprived of their property, customers and trade by reason thereof; that said deprivation will cause irreparable damage to the plaintiffs unless the status quo is maintained. That in order to preserve the status quo until the rights of [fol. 4] the parties can be fully determined by trial this court should issue a preliminary mandatory injunction enjoining the defendants to renew the plaintiffs' permits during the pendency of this action; or in the alternative this court should issue a preliminary injunction enjoining the defendants, their employees, agents or any person acting under their direction or authority from enforcing the criminal sanctions provided for by 62 O.S. 1961 420.8, thereby permitting the plaintiffs to conduct their business during the pendency of this action.

Wherefore, the plaintiffs pray for the above described relief and such other and further general relief as to equity may seem appropriate or necessary in the premises.

Jack Gorum, Charles Gorum, Ozark Butane Company, Inc., By Jack Gorum, President.

Duly sworn to by Jack Gorum, Charles Gorum, and Ozark Butane Company, Inc., by Jack Gorum, its president, jurat omitted in printing.

[fol. 7] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA
Civil Action No. 63-248

[Title omitted]

ANSWER—Filed August 26, 1963

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation in the first paragraph of the Complaint, which states the value of plaintiffs' business within the State of Oklahoma to be in excess of $10,000.00.

Defendants deny that plaintiffs have, or will be deprived of, any legal right to engage in or transact business within the State of Oklahoma, or will be deprived of any property, customers and trade, lawfully acquired while engaging in or transacting business within the State of Oklahoma, which will cause them irreparable harm and damage. All the allegations in the fourth paragraph are hereby denied.

Wherefore, having answered, the defendants pray that the plaintiffs take nothing by this action, and that the defendants be awarded their costs.

Charles Nesbitt, Attorney General, By Lee W. Cook,
Assistant Attorney General.

Certificate of Service (omitted in printing).

[fol. 9] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Civ. 63-248

[Title omitted]

MOTION FOR PRELIMINARY MANDATORY INJUNCTION—
Filed August 30, 1963

Come now the plaintiffs Jack Gorum, Charles Gorum and Ozark Butane Company, Inc. and move the court to issue a preliminary mandatory injunction in the above entitled cause mandatorily enjoining the defendants Oklahoma Liquefied Petroleum Gas Board and W. D. Rush, Liquefied Petroleum Gas Administrator, their agents, servants, employees, and attorneys from enforcing or otherwise operating pursuant to the terms of 52 O.S. 1961 420.14, also known as Senate Bill No. 122, and, in order to preserve the status quo and prevent irreparable harm and damage to the plaintiffs, to require the defendant W. D. Rush, Liquefied Petroleum Gas Administrator, to renew the respective permits of the plaintiffs which they currently hold authorizing them to conduct and operate their liquefied petroleum gas business in the State of Oklahoma during the pendency of this action.

Immediate and irreparable injury, loss and damage will result to the plaintiffs by reason of the denial of the defendants to renew the plaintiffs' respective permits which expire by their own terms at Midnight, August 31, 1963. If said permits are not renewed during the pendency of this action the plaintiffs will be permanently deprived of their established business in this state, all of which damage is more particularly described in the verified Complaint filed herein. The plaintiffs have no adequate remedy at law.

[fol. 10] That the plaintiffs have been engaged in the business of wholesale and retail transportation, distribution and sale of liquefied petroleum gas, and related equipment, for a period of approximately 17 years and each year their respective permits have been automatically renewed by the defendants. That by defendants' own admission the reason for denying the plaintiffs' application for renewal of

their permits was the existence of the above described law. The plaintiffs are qualified to conduct their business and will endanger no person or property by being allowed to continue such business during the pendency of this action. In support of this claim a true and correct copy of a recent letter received by Ozark Butane Company, Inc. from W. D. Rush, Liquefied Petroleum Gas Administrator, is attached hereto and made a part hereof; that the issuance of said preliminary mandatory injunction will not unduly inconvenience the defendants, the public or any person, but if said injunction is denied the same will result in irreparable harm to the plaintiffs. 52 O.S. 420.8 provides that anyone violating the terms of 52 O.S. 1961 420.1-420.13 (commonly known as the Liquefied Petroleum Gas Act) shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500.00 or imprisonment for not more than six months or by both such fine and imprisonment. If the plaintiffs attempt to continue to operate their business as described above without their permits being renewed they will run the risk of being prosecuted under this statute and being penalized accordingly.

Wherefore, the plaintiffs move that either a preliminary mandatory injunction be issued in accordance with the terms of the Complaint filed herein restraining the defendants from enforcing 52 O.S. 1961 420.14, also known as Senate Bill No. 122, and mandatorily requiring them to renew the plaintiffs' respective permits in order to preserve the status quo and prevent irreparable damage during the [fol. 11] pendency of this action, or in the alternative to issue a preliminary injunction enjoining the defendants, its employees, agents or anyone acting under their direction or authority from enforcing the criminal sanctions provided for by 62 O.S. 1961 420.8, thereby permitting the plaintiffs to conduct their business during the pendency of this action.

Jack Gorum, Charles Gorum, Ozark Butane Company, Inc., By Jack Gorum, Pres.

Subscribed and sworn to before me this 24th day of July, 1963.

Gretchen C. Ligon, Notary Public.

My commission expires: March 16, 1966.
(Notarial Seal)

[fol. 12]

ATTACHMENT TO MOTION

STATE OF OKLAHOMA
LIQUEFIED PETROLEUM GAS ADMINISTRATION
OKLAHOMA CITY 5, OKLAHOMA

W. D. RUSH
ADMINISTRATOR

ED T. SABIN
CHIEF DEPUTY

July 16, 1963

Ozark Butane Company
P. O. Box 92
Siloam Springs, Arkansas

Gentlemen:

Pursuant to Senate Bill 122 passed by the 29th Legislature (1963 Session) which was quoted to you in my letter of May 27, 1963, and in view of the opinion of the Attorney General of May 23, 1963, which was also quoted in the same letter, it is my duty as L. P. Gas Administrator of the State of Oklahoma to refuse your application for renewal of your L. P. gas permit.

Enclosed is the application and your check in the amount of $250.00 which your attorney, Mr. Thornton, left in the office of the Administrator on Friday, July 12, 1963.

Yours truly,

/s/ W. D. RUSH
W. D. Rush
Administrator

Registered
Return Receipt Requested

WDR:g
Enc.

[fol. 13] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Civ. 63-248

[Title omitted]

TEMPORARY RESTRAINING ORDER—August 30, 1963

Plaintiffs herein having filed motion for preliminary mandatory injunction and it appearing that it is impossible for a three-judge panel to be constituted and assembled here on said application prior to September 1, 1963;

And it further appearing that immediate and irreparable loss and damage will result to the plaintiffs if the provisions of 52 O.S. 1961 420.15, also known as Senate Bill No. 122, because of the fact that the plaintiffs will be deprived of their established business in this state and that exact damages would be hard, if not impossible to ascertain, and that it is necessary in order to protect the rights of the plaintiffs that the status quo be maintained pending final determination.

It Is Ordered, Adjudged And Decreed that the enforcement of said above described action is hereby enjoined and the defendant is hereby ordered to issue to the plaintiffs temporary license to operate pending final determination of this action; and do all other acts necessary in order to insure the maintenance of status quo pending final determination hereof.

Dated this 30th day of August, 1963.

Stephen S. Chandler, Judge.

[fol. 102] [File endorsement omitted]

[fol. 104]

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 63-248 Civil

JACK GORUM, CHARLES GORUM, and OZARK BUTANE COMPANY, INC., a corporation, Plaintiffs,

vs.

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD and W. D. RUSH, LIQUEFIED PETROLEUM GAS ADMINISTRATOR, Defendants,

vs.

OKLAHOMA LIQUEFIED PETROLEUM GAS ASSOCIATION, Intervenor.

Transcript of Proceedings—November 1, 1963

APPEARANCES:

Mr. David M. Thornton, 1111 Mid-Continent Building, Tulsa, Oklahoma, For the Plaintiffs.

Mr. Charles Nesbitt, Attorney General, State of Oklahoma, Oklahoma City, Oklahoma, By: Mr. Lee W. Cook, Assistant Attorney General, For the Defendants.

Mr. Duke Duvall, 1st Equity Building, Oklahoma City, Oklahoma, For the Intervenor.

[fol. 105] PROCEEDINGS

of trial on the merits, before The Honorable John C. Pickett, Judge, United States Court of Appeals, Tenth Circuit, The Honorable Luther Bohanon, Judge, United States District Court, Northern, Eastern and Western Districts of Oklahoma, and The Honorable Fred Daugherty,

Judge, United States District Court, Northern, Eastern and Western Districts of Oklahoma, on the 1st day of November, 1963, in Courtroom No. 2, United States Court House, Oklahoma City, Oklahoma.

* * * * * * *

[fol. 107] STIPULATION

Mr. Thornton: May it please the Court, we have stipulated that certain documents may be admitted into evidence as to their materiality and relevancy as it may apply.

Plaintiffs' Exhibit Number One is the Certificate of Authority of the plaintiffs to do business in Oklahoma.

Plaintiffs' Exhibit Number Two is a map showing the overall operations of the plaintiffs in Arkansas, Oklahoma and Missouri.

Plaintiffs' Exhibit Number Three is a map showing the individual routes of the plaintiffs' delivery men as they [fol. 108] affect Arkansas, Oklahoma and Missouri.

Plaintiffs' Exhibit Number Four is a list of employes of plaintiffs working in Oklahoma and Arkansas.

Plaintiffs' Exhibit Number Five indicates the gross dollar sales of the plaintiff for the fiscal year of October 1, 1962 to September 30, 1963, both in Arkansas and in Oklahoma.

Plaintiffs' Exhibit Number Six is the gallon volume of the same period of time of LPG sold in Arkansas and Oklahoma.

Plaintiffs' Exhibit Number Seven is an audited financial statement of plaintiff for the year ended December 31, 1962.

Plaintiffs' Exhibit Number Eight is the determination by the Administrator of the Liquefied Petroleum Gas Board of the State of Oklahoma which informs the plaintiff that because of the passing of this statute in question today that he is not entitled to have a permit under the laws of Oklahoma.

Plaintiffs' Exhibit Number Nine is the rejection of plaintiffs' application for a permit.

Judge Pickett: Are there any objections to these exhibits?

Mr. Cook: If the Court please, we've stipulated that Defendants' Exhibit A, which would be the interrogatories [fol. 109] and answers thereto, may be introduced;

Defendants' Exhibit B, being a copy of the Attorney General's opinion regarding Senate Bill 122;

Defendants' Exhibit C, being a copy of the permit which plaintiffs have been operating under in the State of Oklahoma for the year 1962 up until August 31, 1963;

Also, introducing a copy of Senate Bill 122, showing that it was approved. It carried the emergency bill with the approval of the Governor and became law on March 26th, 1963.

I might further add the stipulation in regards to plaintiffs' Exhibits Four, Five, Six and Seven, which is the employes list, gross sales, and gallons sold, and so forth, we stipulate that the plaintiff would so testify. We still would object on the grounds that it would be incompetent, irrelevant and immaterial. But, we would so stipulate that the plaintiff would testify as to those matters.

* * * * * * *

[fol. 110] Ozark Butane started delivering gas to the residents of Oklahoma and Arkansas in 1946. Natural gas is not available in either of the counties in Oklahoma where their present operation is done.

Ozark Butane delivered three hundred and eighty thousand gallons of butane and propane in 1946. It has increased its business at the rate of twenty per cent per year since its inception. This year it will sell a little over six million gallons of LPG, thirty per cent of which, or approximately two million gallons, will be sold in Okla-
[fol. 111] homa.

* * * * * * *

[fol. 112b] Mr. Thornton: What I am saying, your Honor, is that the evidence will be to the best of our ability to show that there have been no permits issued that we know of by the Arkansas Commission to residents of Oklahoma.

Judge Bohanon: Why?

Mr. Thornton: I have no reasons other than political. I have my own reason.

Judge Pickett: Has there been applications made?

Mr. Thornton: From my knowledge, yes, from what I hear. We have never because being a resident, we have a permit in Arkansas.

Judge Bohanon: Now, residents in Oklahoma made application to do business in Arkansas and the board has refused?

Mr. Thornton: That's right.

* * * * * * *

[fol. 119] CHARLES GORUM, a plaintiff, being called to the witness stand in his own behalf, after being first duly sworn, testified on his oath as follows:

Direct examination.

By Mr. Thornton:

Q. State your name, please.

A. Charles Gorum.

Q. Where do you live, Mr. Gorum?

A. Siloam Springs, Arkansas.

Q. Are you the Charles Gorum that's named as the plaintiff in this matter?

A. I am.

Q. And you are one of the personal stockholders of Ozark Butane Company, Inc.?

A. Yes.

Q. How long has Ozark Butane Company been in existence?

A. Since 1946.

Q. Was it domesticated in Oklahoma?

A. Yes.

Q. When was this done?

A. This summer.

Q. Has the Ozark Butane Company since 1946 continuously had a permit to do business in Oklahoma?

A. Yes.

[fol. 120] Q. Would you briefly describe the operations of your business with respect to the source of your supply of gas and the destination and the transportation from that destination to its ultimate delivery points.

A. All of our gas is purchased at Oklahoma companies at Oklahoma plants, loaded into our own transports and hauled into a central bulk plant at Siloam Springs, Arkansas where it loses its identity when it's pumped into storage. Then it is metered back out either into bobtails or smaller transports and delivered in to the consumers in Arkansas or Oklahoma.

Q. What is the volume of gas that you are presently disposing of in the ratio as to Arkansas and Oklahoma?

A. Approximately seventy per cent in Arkansas and thirty in Oklahoma.

Q. And the volume in gallons?

A. Approximately two million in Oklahoma and four in Arkansas.

Q. You are acquainted with the terms of this statute, Senate Bill 122?

A. Yes.

Q. Did you, at any time, attempt to comply with this statute?

A. Yes, sir.

Q. What did you do?

[fol. 121] A. We asked for a permit and was turned down.

Q. Who asked for the permit?

A. I asked for the permit.

Q. You individually or for the company?

A. For the company.

Q. Was this company an Arkansas company or Oklahoma company?

A. It was an Arkansas company. Then we formed an Oklahoma company and we asked for a permit for the Oklahoma company.

Q. And you were denied that permit?

A. Yes.

Q. And the Oklahoma company was incorporated in Oklahoma, and was it your idea to replace the Oklahoma business in Oklahoma as a separate entity from the Arkansas business?

A. Yes.

Q. Did you make a formal application for a permit for this company?

A. The Oklahoma company?

Q. Yes.

A. Yes, we did.

Q. Did you ever have any conversation with the Administrator of the Liquefied Petroleum Gas Board relative to this matter?

[fol. 122] A. Yes.

Q. And what did he tell you about the possibility of that company, the Oklahoma company, obtaining a permit?

A. The Administrator and Deputy Administrator told me that they had a two hundred and thirteen question examination and that we would have to take that and that they were able and were going to weed out all of their applications with this examination. They had thirteen questions in there that had to be passed, answered right, or miss any one of them and you failed the examination, and you had to pass ninety per cent of the rest of them. And, they are essay type questions.

Q. And did they tell you they did not think there was any possibility of you passing that type of examination?

A. They told me I could not pass it, or anybody from my organization.

Q. Have you been at any time in conflict with the Oklahoma Liquefied Petroleum Gas Association which is a party to this lawsuit?

A. No.

Q. Have you ever had any conflict as to the price of gas?

A. Yes. They are constantly trying to raise the price of gas in Oklahoma.

Q. Have you ever been told by a member of the associ-

[fol. 123] ation, or member or director, that this statute was aimed directly at Ozark Butane?

A. Yes. I was told in Rush Springs, Oklahoma by Mr. Rush that this statute was aimed at Ozark and Arkansas dealers.

Mr. Cook: I object. It's incompetent, irrelevant and immaterial. They are going back into the matter of going into the policy as to why the Oklahoma Legislature even passed the law.

Judge Pickett: How would the administrator know what the legislature thought about the statute?

Mr. Thornton: I would assume that the administrator would have knowledge of this statute, since it directly affects the statute in the State of Oklahoma.

Judge Pickett: We will hear the evidence.

By Mr. Thornton:

Q. Mr. Gorum, you say you pick up this gas and deliver it in your own transports?

A. Yes.

Q. Do you hold a common carrier permit in Oklahoma?

A. No.

Q. Are you subject to the regulations and rules of the Interstate Commerce Commission?

A. Yes, we are.

Mr. Thornton: I believe that's all.

[fol. 124] Cross examination.

By Mr. Cook:

Q. Mr. Gorum, I believe you testified that you have storage tanks in Oklahoma; is that correct?

A. Yes, sir.

Q. And the interrogatory which you answered show about four different towns, I believe, sir.

A. Yes, sir.

Q. Are those located all in Oklahoma, all those storage locations?

A. All those four are, yes.

Q. Now, the gas you pick up in Oklahoma, I believe you said you carried all of it into Arkansas; is that correct, sir?

A. That's correct.

Q. Now, when these trucks pass through Oklahoma after they pick up this gas on the way to Arkansas, do they go by any of these four towns where you have storage?

A. Yes, sir.

Q. Is there any particular reasons why they could not deliver butane directly into those tanks?

A. Yes, sir.

Q. Do you normally wait until the tanks are completely empty before you bring butane over to Oklahoma and fill them up?

[fol. 125] A. No, sir.

Q. Would I be correct, you bring butane over out of Arkansas and put it in the tanks in Oklahoma, intermingle it with gas that's already in there; is that correct?

A. Yes, sir.

Q. I believe you mentioned, Mr. Gorum, that you filed Articles of Corporation for an Oklahoma corporation; is that correct?

A. Yes, sir.

Q. Was that before or after Senate Bill Number 122 was passed, if you know?

A. After.

Q. And you filed an application for a license with the Administrator of the Gas Board?

A. Yes.

Q. Did you complete all forms?

A. No, sir.

Q. I wonder if you would explain what you mean.

A. One of the forms was the two hundred and thirteen question examination.

Q. Did you start to fill out the form, sir, if you remember?

A. I don't think so. I think we started on it. We hit that far and then we quit.

Q. Just quit and went home?

[fol. 126] A. Yes.

Q. Did they refuse to give you an application to get a permit?

A. No, sir.

Q. Then, am I correct that you could have completed it if you so desired.

A. Yes, sir.

Mr. Cook: I believe that's all.

Mr. Duvall: No questions, your Honor.

Redirect examination.

By Mr. Thornton:

Q. Mr. Gorum, with respect to the application of this Oklahoma company, as the Liquefied Petroleum Gas Statute read at that time, was there any authority for the administrator to require an examination?

A. Not to my knowledge.

Mr. Thornton: I believe that's all.

Judge Bohanon: I don't know its importance, but you testified that your trucks loaded with gasoline in Oklahoma, going to Arkansas, could not or did not stop and fill the tanks in the towns you serviced in Oklahoma. Why?

The Witness: Several reasons, your Honor. Some of these storage plants are only twelve thousand gallons in size and these transports are ten thousand gallons in size. [fol. 127] The tank would practically have to be out before we could unload there.

And, too, if we buy gas in Oklahoma and unload it in Oklahoma we are subject to buy a road license. They license that vehicle both in Arkansas and Oklahoma.

And then, three, we carry a tight inventory control that all gas brought into Arkansas and dumped into a master storage is dumped in storage and then run through meters, and that's our basic means of keeping an inventory.

Judge Bohanon: Well, I don't know its importance, but, just curiosity, I guess. That's all.

Mr. Thornton: I believe that's all. Plaintiff rests, your Honor.

Mr. Cook: If the Court please, the defendant sees no need of putting on any testimony on the basis of what's already been stipulated. I would like to do this at this time, ask the Court to take judicial knowledge of the Liquefied Petroleum Gas Laws of Arkansas, they being found principally at 53-702 through 53-728, as well as the Oklahoma laws pertaining thereto which are found in Title 52 OS, Section 420.1 through 420.4.

Judge Pickett: Does that close the evidence?

Mr. Thornton: Plaintiff rests, your Honor.

* * * * * * * *

[fol. 174] Reporter's Certificate to foregoing transcript (omitted in printing).

In United States District Court
For the Western District of Oklahoma
Plaintiffs' Exhibit No. 1

[fol. 176]

OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF AUTHORITY

"To all to Whom these Presents shall Come Greeting:

WHEREAS, OZARK BUTANE COMPANY, INC.

incorporated under the laws of the State of ARKANSAS has filed in the office of the Secretary of State duly authenticated evidence of its incorporation and appointment of THE CORPORATION TRUST COMPANY, 735 First National Bldg., Oklahoma City of Oklahoma City, in the County of Oklahoma, State of Oklahoma, as Registered Agent and an application for Certificate of Authority to transact business in this State, as provided by the Laws of the State of Oklahoma

NOW THEREFORE, I, the undersigned Secretary of State of the State of Oklahoma by virtue of the powers and duties vested in me by law, do hereby issue this Certificate of Authority authorizing said Corporation to transact business in this State and attach hereto a copy of the application of the aforesaid corporation.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.

Done at the City of Oklahoma City this 19 day of July A. D. 19 63

Jewey M. Bullard

Secretary of State

CERTIFICATE OF AUTHORITY

To all to Whom these Presents shall Come Greeting:

WHEREAS, OZARK BUTANE COMPANY, INC.,

incorporated under the laws of the State of ARKANSAS *has filed in the office of the Secretary of State duly authenticated evidence of its incorporation and appointment of* THE CORPORATION TRUST COMPANY, 735 First National Bldg., Oklahoma City *of Oklahoma City, in the County of Oklahoma, State of Oklahoma, as Registered Agent and an application for Certificate of Authority to transact business in this State, as provided by the Laws of the State of Oklahoma.*

NOW THEREFORE, *I, the undersigned, Secretary of State of the State of Oklahoma by virtue of the powers and duties vested in me by law, do hereby issue this Certificate of Authority authorizing said Corporation to transact business in this State and attach hereto a copy of the application of the aforesaid corporation.*

IN TESTIMONY WHEREOF, *I hereunto set my hand and cause to be affixed the Great Seal of the State of Oklahoma.*

Done at the City of Oklahoma City, this 19 63 *day of* July *A. D., 19*

Jewell M. Bullard
Secretary of State

Jack Dettenger
Assistant Secretary of State

(Great Seal of the State of Oklahoma—1907)

STATES DISTRICT COURT
RN DISTRICT OF OKLAHOMA
FFS' EXHIBIT No. 1
[fol. 176]
19

Form No. 2

(FILE IN DUPLICATE)

FEE: $18.00, PLUS $1.00 per $1,000.00 in Excess of $10,000.00 Capital Employed in Oklahoma.

ARTICLES OF DOMESTICATION

TO THE SECRETARY OF STATE OF THE STATE OF OKLAHOMA:

Ozark Butane Company, Inc., (In Oklahoma one of the following, or an abbreviation of one, must be added, "Corporation", "Company", "Incorporated" or "Limited'.)

a corporation organized and existing under and by virtue of the laws of the State of Arkansas, desiring domestication in the State of Oklahoma for the purpose of transacting business or exercising its corporate powers or franchises, hereby makes application for a Certificate of Domestication and submits the following statement pursuant to "The Business Corporation Act" of Oklahoma.

1. The above corporation was duly incorporated under the laws of the State of Arkansas on the 3rd day of December, 1945 A.D. for a term of perpetual years.

2. The location of the principal or registered office in the State, Territory or Country under the laws of which it is formed is:

916 E. Main Street, Siloam Springs, Arkansas, U. S. A.

No. Street City State Country

3. The address of the proposed registered office in the State of Oklahoma will be 1111 Mid-Continent Bldg. Street in the city of Tulsa, Oklahoma, and the name and address of the registered agent in this State in Oklahoma City is

The Corporation Company, 735 First National Building

4. The corporation is domesticated or admitted to transact or engage in business in the following states and countries:

Arkansas

5. The names of its principal officers and directors and their addresses are as follows:

	NAME	NO. AND STREET	CITY	STATE
PRES.	Jack Gerum	916 E. Main Street,	Siloam Springs,	Arkansas
SECY.	Jewell Gerum	916 E. Main Street,	Siloam Springs,	Arkansas
TREAS.	Jewell Gerum	916 E. Main Street,	Siloam Springs,	Arkansas
DIR'R	Jack Gerum	916 E. Main Street,	Siloam Springs,	Arkansas
DIR'R	Charles Gerum	916 E. Main Street,	Siloam Springs,	Arkansas
DIR'R	Jewell Gerum	916 E. Main Street,	Siloam Springs,	Arkansas
DIR'R				

[fol 177]

4. The corporation is domesticated or admitted to transact business in the following countries: Arkansas

5. The names of its principal officers and directors and their addresses are as follows:

	NAME	NO. AND STREET	CITY	STATE
PRES.	Jack Gerum	916 E. Main Street,	Siloam Springs,	Arkansas
SECY.	Jewell Gerum	916 E. Main Street,	Siloam Springs,	Arkansas
TREAS.	Jewell Gerum	916 E. Main Street,	Siloam Springs,	Arkansas
DIR'R	Jack Gerum	916 E. Main Street,	Siloam Springs,	Arkansas
DIR'R	Charles Gerum	916 E. Main Street,	Siloam Springs,	Arkansas
DIR'R	Jewell Gerum	916 E. Main Street,	Siloam Springs,	Arkansas
DIR'R				
DIR'R				

6. State briefly the purpose of the corporation:

Retail and wholesale transportation, distribution and sale of Liquefied Petroleum Gas and installing, leasing, selling and servicing equipment, tanks and trucks related thereto

FILED
JUL 19 1963
JAMES M. DULLARD
SECRETARY OF STATE

7. The aggregate number of its authorized shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class is:

CLASS	SERIES	NO. OF SHARES	PAR VALUE PER SHARE OR STATE THAT SHARES HAVE NO PAR VALUE
Common	--	2,500	$100.00

8. The aggregate number of its allotted shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, is:

CLASS	SERIES	NO. OF SHARES	PAR VALUE PER SHARE OR STATE THAT SHARES HAVE NO PAR VALUE
Common	--	1,500	$100.00

[fol. 177]

20

9. Give an estimate of the value of all the property to be owned by the corporation during the current fiscal year wherever located.

$ 250,000.00

10. State the estimated gross amount of business of the corporation to be transacted by it everywhere for the current fiscal year.

$ 650,000.00

11. That the maximum amount of capital invested or proposed to be invested in the State of Oklahoma at any time during the current fiscal year will not exceed $ 77,315.00, and that the remainder, or a greater amount of its capital will not be used in connection with its business within said State without further notice and payment of the proper admission fees.

12. Telegraph, telephone, cable, railroad or pipeline companies give an estimate of the total length of line everywhere, and the length of line to be located in Oklahoma during the current fiscal year:

None
(Estimate of total length of line everywhere)

None
(Estimate of length of line located in Oklahoma)

INTERROGATORY

Is the corporation in good standing at the present time in the state where it was organized?

Yes X No

IN WITNESS WHEREOF, the undersigned corporation has caused these Articles of Domestication to be executed in its name by its Vice President, attested by its Assistant Secretary, this 18th day of July, 1963

OZARK BUTANE COMPANY, INC.
(Exact Corporate Title)

By [signature]
Its Vice President

(CORPORATE SEAL)

ATTESTED:

[signature]
Its Assistant Secretary

STATE OF Oklahoma) SS.

[fol. 177a]

None

(Estimate of length of line located in Oklahoma)

INTERROGATORY

Is the corporation in good standing at the present time in the state where it was organized?

Yes X No

IN WITNESS WHEREOF, the undersigned corporation has caused these Articles of Domestication to be executed in its name by its Vice President, attested by its Assistant Secretary, this 18th day of July, 1963

OZARK BUTANE COMPANY, INC.

(Exact Corporate Title)

By _____

Its Vice President

(CORPORATE SEAL)

ATTESTED: _____

Its Assistant Secretary

STATE OF Oklahoma }
SS.
COUNTY OF Tulsa }

Before me, Phyllis C. Dalozier, a Notary Public, in and for said County and State on this 18th day of July, 1963, personally appeared Charles Gorum, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing Articles of Domestication as its Vice President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

_____

Notary Public.

My Commission expires March 29, 1967

(SEAL)

[fol. 177a]

21

[fol. 178]

Charter Fee	$	77 32
Notary Com. Fee	$	
Requisition Fee	$	
Copy	$	
Seal of State	$	
Filing	$	
Partnership	$	
Trade Mark	$	
Miscellaneous	$	5 00
Total	$	82 32

RECEIPT

No. 285

Oklahoma City, Okla. 4-14, 19 61

Received of Ozark Natural Gas Corporation, Inc.

Eighty-Two 32/100 DOLLARS

Fees as Follows:

Charter

JAMES M. BULLARD, Secretary of State

By C. C. Evans

22

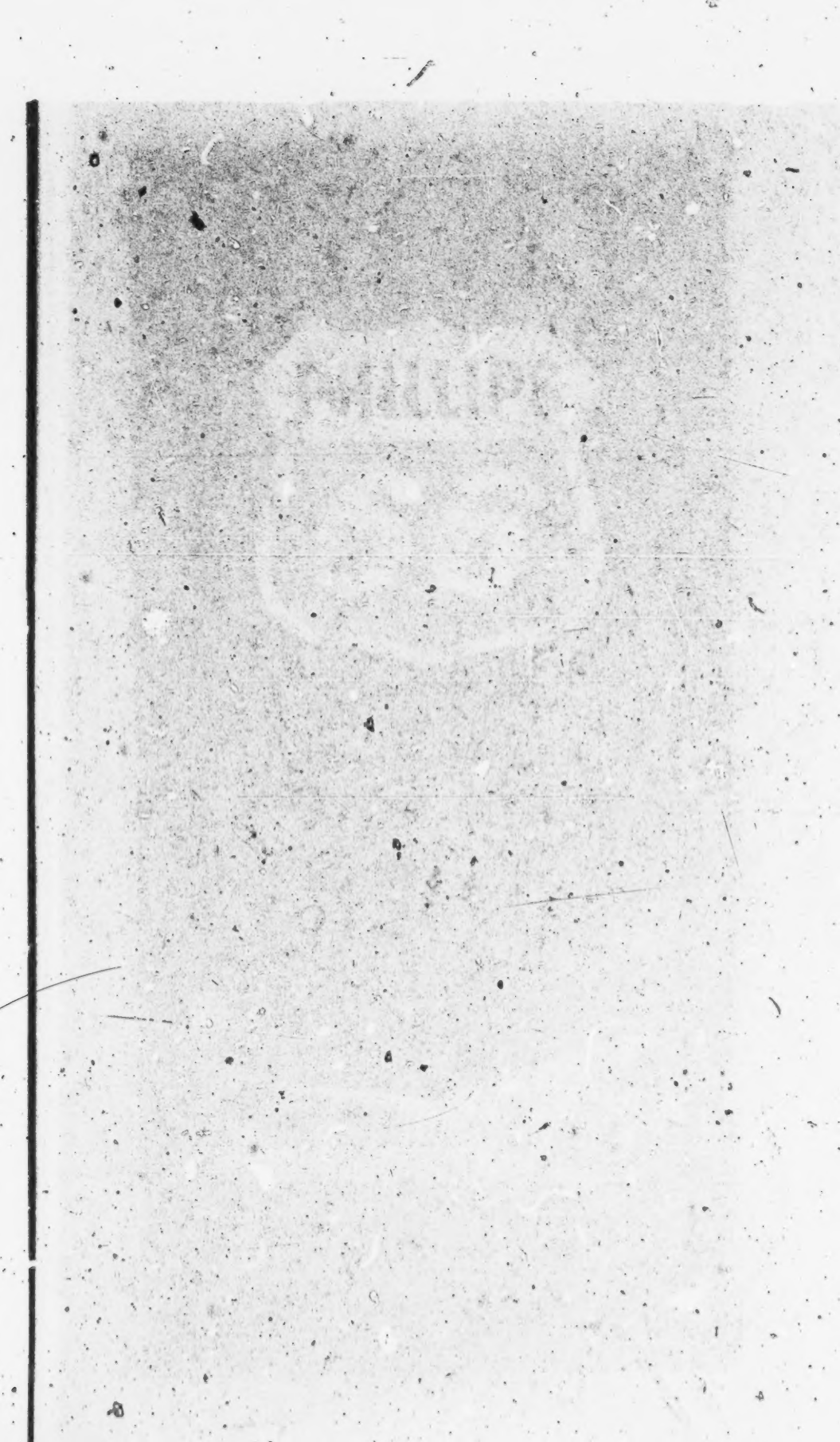
fol. 1

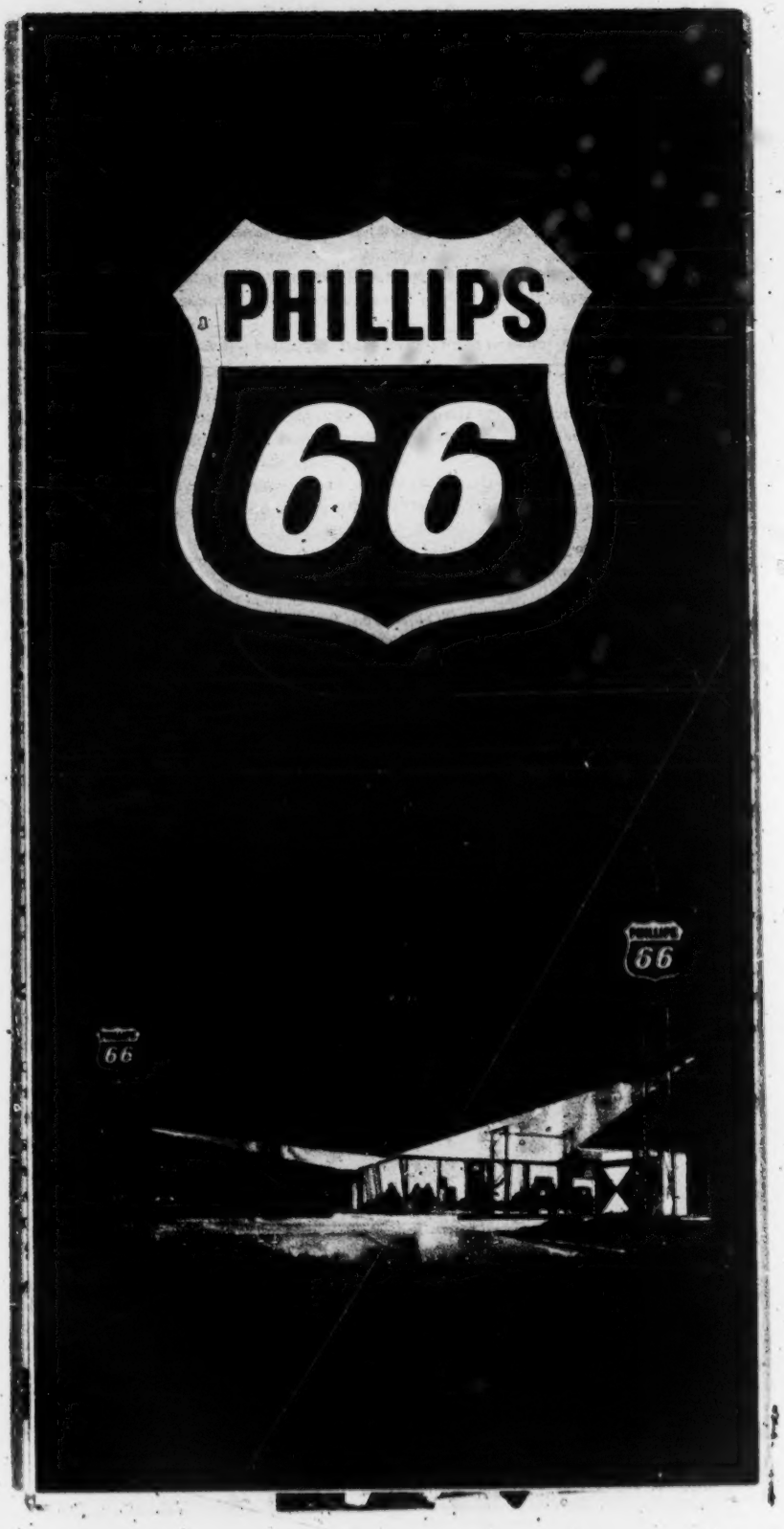
[fol. 179a]

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

PLAINTIFFS' EXHIBIT NO. 3

(See Opposite) ☞




PHILLIPS
66
66
66

[fol. 180]

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

PLAINTIFFS' EXHIBIT No. 4

(See Opposite) ☞

ZARK BUTANE COMPANY, INC.

JACK GORUM, PRESIDENT
CHARLES GORUM, VICE-PRESIDENT

PHONES 524-3126 OR 524-3127
916 EAST MAIN STREET
SILOAM SPRINGS, ARKANSAS

[fol. 180]

WESTVILLE, OKLAHOMA
PHONE PA 3-4808

KANSAS, OKLAHOMA
PHONE UN 8-2420

COLCORD, OKLAHOMA
PHONE FA 6-8513

STILWELL, OKLAHOMA
PHONE 774-7662
OR 774-2211

HIWASSE, ARKANSAS
PHONE ST 7-5513

ROGERS, ARKANSAS
PHONE ME 6-3934

LINCOLN, ARKANSAS
PHONE TA 4-1561
OR TA 4-2711

MAYSVILLE, ARKANSAS
PHONE AX 1-3170

EMPLOYEES - Ozark Butane Co.Inc.
Siloam Springs, Arkansas

Oklahoma

Charles Tillery	Westville, Okla
Charlie Smith	Westville, Okla
Overton Gann	Kansas, Okla
Troy Abbott	Rtl, Stilwell, Okla
Alva Linam	Colcord, Okla
Kenneth Place	Rt 4, Siloam Springs, Ark

Arkansas

Max Douglas	Rt 1, Bentonville, Ark
Lawrence McDell	Rt 4, Rogers, Ark
William Camp	Lincoln, Ark
James Napier	Lincoln, Ark
Dean Austin	Maysville, Ark
Austin Ivey	Rt 1, Siloam Springs, Ark
Joe Clark	Rt 1, Siloam Springs, Ark
Earl Barney	Siloam Springs, Ark
Robert McReynolds	Siloam Springs, Ark
Robert Patterson	Rt 1, Siloam Springs, Ark
Leonard DeMoss	Rt 1, Siloam Springs, Ark
Don Marlow	Siloam Springs, Ark
Gene Reading	Rt 1, Siloam Springs, Ark
Harold Parsons	Siloam Springs, Ark
Ralph Gnagey	Rt 3, Siloam Springs, Ark
James Henegar	Siloam Springs, Ark
Charles Harman	Siloam Springs, Ark
Julia DeMont	Siloam Springs, Ark
Arthur Bonner	Rt 1, Siloam Springs, Ark
Jack Gorum	Siloam Springs, Ark
Charles Gorum	Siloam Springs, Ark
Esther Sutherland	Rt 2, Siloam Springs, Ark

Gross Income Gas Sales

OZARK BUTANE CO., INC.

October 1, 1962 - September 30, 1963

		Wholesale	Retail
ARKANSAS			
1962	October	$ 4,520.64	16,344.17
	November	6,445.89	25,806.75
	December	8,109.44	43,050.93
1963	January	14,075.76	51,801.05
	February	12,443.87	25,142.41
	March	10,192.34	34,707.74
	April	5,949.96	19,127.53
	May	4,760.06	10,073.89
	June	3,723.04	8,146.26
	July	3,848.40	8,149.42
	August	4,367.31	21,137.18
	September	3,798.13	11,630.76
		$ 82,234.84	$ 275,168.09
OKLAHOMA			
1962	October	- o -	12,317.38
	November	- o -	17,351.44
	December	392.58	20,524.09
1963	January	556.02	23,280.89
	February	616.92	13,507.15
	March	1,597.74	14,324.98
	April	2,376.30	7,593.77
	May	3,240.69	2,400.51
	June	3,443.69	2,087.39
	July	2,640.55	4,473.32
	August	5,270.65	4,607.95
	September	4,000.05	5,603.78
		$ 24,137.89	$ 128,172.65

Total -	Arkansas	$ 357,402.93	- 70.1%
	Oklahoma	152,310.54	- 29.9%
		$ 509,713.47	

[fol. 182]

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA
PLAINTIFFS' EXHIBIT No. 6

Gallons Sold

OZARK BUTANE CO., INC.

October 1, 1962 - September 30, 1963

	Wholesale	Retail
ARKANSAS		
October 1962	77,937	127,099
November	111,649	281,170
December	140,445	356,094
January 1963	230,340	532,888
February	183,781	384,240
March	150,145	246,456
April	103,218	141,377
May	86,159	124,201
June	73,534	83,965
July	84,010	71,525
August	93,956	152,333
September	77,867	109,061
	1,418,851	2,609,409

Wholesale 1,418,851 - 23.53%
Retail 2,609,409 - 43.28%
4,028,260

OKLAHOMA		
October 1962	—0—	95,796
November	—0—	156,956
December	6,543	212,532
January 1963	9,267	296,068
February	10,282	199,903
March	26,629	146,599
April	39,605	71,976
May	57,608	66,466
June	62,158	51,459
July	51,711	150,091
August	103,013	139,808
September	79,001	67,363
	445,817	1,555,107

Wholesale 445,817 - 7.39%
Retail 1,555,107 - 25.80%
2,000,924

Total:- Arkansas & Oklahoma

Wholesale 1,864,668 - 30.93%
Retail 4,164,516 - 69.07%
6,029,184

[fol. 198]

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

PLAINTIFFS' EXHIBIT No. 8

(Letterhead of Liquefied Petroleum Gas Administration
Oklahoma City 5, Oklahoma)

May 27, 1963

Mr. Jack Gorum
Ozark Butane Company
Box 192
Siloam Springs, Arkansas

Dear Sir:

I have just received an opinion form the Attorney General's office regarding SB 122. Realizing your deep concern of how this law will affect your Oklahoma operations, I am notifying you immediately of the opinion and our findings in this matter. The opinion in part is as follows:

"The Bill provides that the Administrator 'shall not issue or renew' a permit or license 'unless' the laws, etc. meet the necessary requirements. Therefore, the Administrator must determine that such laws *do* meet the requirements before granting the permit or license. Unless and until the necessary finding is made, the Administrator is prohibited from issuing or granting permits or licenses to applicants residing in any such state.

"It is the opinion of the Attorney General that the Administrator must not issue any registration permit or license to any applicant whose residence or principal place of business is located in a state other than Oklahoma unless such other state qualifies under the terms of the Bill. Although the Administrator may notify all permittees, licensees and applicants for permits and licenses who reside in non-conforming states that he

will not issue or renew their permits or licenses, he is not required to do so."

[fol. 199] It is our findings that the laws, rules and regulations of the State of Arkansas do not meet the requirements of our Oklahoma law; therefore your permit to operate an L-P gas business in Oklahoma will not be renewed September 1.

Yours truly,

/s/ W. D. RUSH
W. D. Rush.
Administrator

[fol. 200]

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

PLAINTIFFS' EXHIBIT No. 9

(Letterhead of Liquefied Petroleum Gas Administration, Oklahoma City 5, Oklahoma)

July 16, 1963

Ozark Butane Company
P. O. Box 92
Siloam Springs, Arkansas

Gentlemen:

Pursuant to Senate Bill 122 passed by the 29th Legislature (1963 Session) which was quoted to you in my letter of May 27, 1963, and in view of the opinion of the Attorney General of May 23, 1963, which was also quoted in the same letter, it is my duty as L. P. Gas Administrator of the State of Oklahoma to refuse your application for renewal of your L. P. gas permit.

Enclosed is the application and your check in the amount of $250.00 which your attorney, Mr. Thornton, left in the office of the Administrator on Friday, July 12, 1963.

Yours truly,

/s/ W. D. RUSH
W. D. Rush
Administrator
Registered
Return Receipt Requested
WDR:g
Enc.

[fol. 201]

Batt Wasson Bank
NAME OF BANK

Siloam Springs Ark. 12 July 1963
CITY AND STATE DATE

PAY TO THE ORDER OF J F B Gymnastics $23.00

Twenty three and no/100 DOLLARS

I HEREBY REPRESENT THAT THE AMOUNT DRAWN FOR IN THIS CHECK IS ON DEPOSIT TO MY CREDIT IN THE ABOVE NAMED INSTITUTION FREE FROM ANY CLAIMS AND ACKNOWLEDGE THAT THIS AMOUNT HAS BEEN PAID TO ME UPON MY REPRESENTATION OF SUCH FACTS.

92 Ark Butane Co

ADDRESS

PHONE NO. 12 BANK ACCT. NO. Chas Yee

COMPLIMENTS OF THE FIRST NATIONAL BANK AND TRUST COMPANY OF TULSA

L P G Form 2A

APPLICATION FOR RENEWAL OF PERMIT TO ENGAGE IN THE BUSINESS OF TRANSPORTING, DISTRIBUTING OR RETAILING LIQUEFIED PETROLEUM GAS IN THE STATE OF OKLAHOMA.

Annual Permit Fee

1 to five units(inclusive	& 100.00	9 units	200.00
6 units	125.00	10 units	225.00
7 units	150.00	11 or more	
8 units	175.00	units	250.00

Check the number of trucks you operate. 11 Amount of money $250.00

The Applicant applies herein for renewal permit as required under the terms and provisions of H.B. 1017 of the 26th Legislature. (1957 Session)

The Applicant Ozark Butane Company, Inc.
Name under which business is to be operated

is a, ~~xxxxx~~ Corporation Incorporated under the laws of Arkansas
If incorporated

LIST OF OFFICERS, PARTNERS OR OWNERS

NAME	CAPACITY	ADDRESS
Jack Gorum	President	Box 192, Siloam Springs, Arkansas
Charles Gorum	Vice-President	Box 192, Siloam Springs, Arkansas
Jewell Gorum	Secretary-Treasurer	Box 192, Siloam Springs, Arkansas

The Travelers Insurance Company — Hartford, Connecticut
— Name of Insurance Company — Address

1. How many units will you operate in Oklahoma ? 6 Bobtails 5 Semi-Trailers

2. Give name and address of the person or firm from whom you will purchase your fuel. Union Petroleum Corporation, Tulsa, Oklahoma; Texaco, Inc., Tulsa, Oklahoma

3. Give name and location of the plant from which you load. Texaco, Davenport & Mayesville, Okla.; DX Sunray, Carney, Moore & Criner, Okla. Kerr-McGee, Wynnewood, Okla.

4 Are you familiar with the Rules and Regulations for the SAFE handling of Liquefied Petroleum Gas ? Yes

5 Do you understand that all I.C.C. Cylinders shall be filled by weight at a centrally located place ? Yes

It is further understood that I, or We will comply with each and every provision of the Rules and Regulations of the Liquefied Petroleum Gas Adminis-

[fol. 202]

is a, ~~xxxx~~, Corporation Incorporated under the laws of Arkansas
If incorporated

LIST OF OFFICERS, PARTNERS OR OWNERS

NAME	CAPACITY	ADDRESS
Jack Gorum	President	Box 192, Siloam Springs, Arkansas
Charles Gorum	Vice-President	Box 192, Siloam Springs, Arkansas
Jewell Gorum	Secretary-Treasurer	Box 192, Siloam Springs, Arkansas

The Travelers Insurance Company — Hartford, Connecticut
Name of Insurance Company — Address

1. How many units will you operate in Oklahoma ? 6 Bobtails 5 Semi-Trailers

2. Give name and address of the person or firm from whom you will purchase your fuel. Union Petroleum Corporation, Tulsa, Oklahoma; Texaco, Inc., Tulsa, Oklahoma

3. Give name and location of the plant from which you load. Texaco, Davenport & Mayesville, Okla.; DX Sunray, Carney, Moore & Criner, Okla. Kerr-McGee, Wynnewood, Okla.

4 Are you familiar with the Rules and Regulations for the SAFE handling of Liquefied Petroleum Gas ? Yes

5 Do you understand that all I.C.C. Cylinders shall be filled by weight at a centrally located place ? Yes

It is further understood that I, or We will comply with each and every provision of the Rules and Regulations of the Liquefied Petroleum Gas Administrator, and will furnish additional information as requested from that Office. I, or We are also aware that failure to comply with SAFETY Rules and Regulations could cause revocation OR cancellation of my permit.

I, or We agree that any change in ownership, or change in name will be reported to the Liquefied Petroleum Gas Administrator by registered mail.

All records will be kept available for inspection at the address listed below.

Do not write in space below

Permit Number
Receipt Number
Date Issued

Ozark Butane Company, Inc.
Name under which permit is to be issued
By [signature]

P. O. Box 192 — 524-3126
P.O. Box Street — Phone

Siloam Springs — Arkansas
Town — State

[fol. 202]

[fol. 202a]
[fol. 202b]

TROLEUM GAS ADMINISTRATION
ADMINISTRATOR
RS BUILDING
OKLAHOMA 73105

Hire the Handicapped!
I know it's
good business

U.S. POSTAGE
75

NOTICE 7 1963

NOTICE

VIN

Ozark Butane Company
P. O. Box 92
Siloam Springs, Arkansas

REGISTERED
Return Receipt Requested
$225-0

SILOAM SPRINGS, ARK
JUL 17 1963
USPO

OKLAHOMA CITY, OKLA.
JUL 1963

OKLAHOMA CITY, OKLA.
JUL 1963

[fol. 203]

DEFENDANTS' EXHIBIT No. 1

[Stamp—Filed Oct 23 1963—Vera L. Howard, Clerk, U. S. District Court—By Dan Jas. Sanders, Deputy]

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 63-248 Civil

JACK GORUM, CHARLES GORUM and OZARK BUTANE COMPANY, INC.,

Plaintiffs,

vs.

OKLAHOMA LIQUIFIED PETROLEUM GAS BOARD and W. D. RUSH, Liquified Petroleum Gas Administrator,

Defendants.

INTERROGATORIES OF DEFENDANTS AND INTERVENOR TO PLAINTIFFS PURSUANT TO RULE 33

Come now the defendants and the intervenor and request that the plaintiffs answer the following interrogatories pursuant to Rule 33 except that they be answered and in the hands of the attorneys whose names are signed below by the 29th day of October, 1963:

(1) Give the location of each liquified petroleum gas storage tank which you have located in Oklahoma and the amount of its capacity by gallons.

(2) Is all of your liquified petroleum gas bought in Oklahoma and if so where is it purchased? If not, what percentage of the gas that you deal in is purchased in Oklahoma and where is it purchased?

(3) Give the names and addresses of the individuals, persons or corporations located in Oklahoma who purchase [fol. 204] liquified petroleum gas from you wholesale.

(4) Approximately what is the number of customers that you sell to retail as consumers in Oklahoma?

(5) What percentage of your business approximately of retail quantities is represented by consumers living in Oklahoma?

(6) What percentage approximately of wholesale quantities is represented by consumers living in Oklahoma?

(7) How many gasoline transport trucks do you operate and what is their capacity?

(8) Do you hold a certificate of convenience and necessity from the Corporation Commission of Oklahoma or the Public Service Commission of Arkansas or the Interstate Commerce Commission and if so give the certificate numbers and the type of authority you have. If you have permits instead of certificates give that information.

(9) How many bobtail or retail consumer delivery trucks do you have and how many are principally stationed in Oklahoma?

(10) With reference to liquified petroleum gas stored in your storage tanks located in Oklahoma, what percentage of the gas therein stored is delivered to Oklahoma customers from such Oklahoma storage tanks according to your best estimate and give the detail facts in that regard?

(11) Do you use any storage facilities located in Oklahoma for delivery of gas to customers other than in Oklahoma [fol. 205] and if so to where and why is this done?

(12) Do you deliver to customers in Oklahoma gas that has been stored at tanks located other than in Oklahoma and if so from what tanks and why is this done instead of delivering from Oklahoma tanks?

(13) Do you transport any gas of other people for hire and if so give the number of customers and the extent of such business generally?

CHARLES NESBITT, Attorney General

By /s/ LEE W. COOK
Lee W. Cook, Assistant
Attorney General
Attorneys for Defendants

DUVALL AND HEAD
300 First Equity Building
Oklahoma City, Oklahoma

By /s/ DUKE DUVALL
Duke Duvall
Attorneys for Intervenor

[fol. 206] Certificate of Service (omitted in printing).

[fol. 208]

[Stamp—Filed Oct 29 1963—Vera L. Howard, Clerk, U. S. District Court—By Muriel L. Cooper, Deputy]

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 63-248 Civil

JACK GORUM, CHARLES GORUM and
OZARK BUTANE COMPANY, INC.,

Plaintiffs,

vs.

OKLAHOMA LIQUIFIED PETROLEUM GAS BOARD and W. D. RUSH, Liquified Petroleum Gas Administrator,

Defendants.

ANSWER TO INTERROGATORIES OF DEFENDANTS AND INTERVENOR TO PLAINTIFFS PURSUANT TO RULE 33

Come now the plaintiffs and submit the following answer to defendants and intervenors interrogatories:

Answer to Interrogatory No. I:

Stilwell, Oklahoma	18,000 gallons	
	8,000 gallons	Stilwell Canning
Proctor, Oklahoma	8,000 gallons	Robinson Canning
Westville, Oklahoma	12-2,048 gallons	
Kansas, Oklahoma	2-6,000 gallons	
Colcord, Oklahoma	2-6,000 gallons	
Jay, Oklahoma	8-1,000 gallons	Jay Chicken Killing plant

Answer to Interrogatory No. II:

Yes. Union Petroleum Corporation, Tulsa, Oklahoma;
Texaco, Inc., Tulsa, Oklahoma.
Union—Carney, Moore, Criner, Wynnewood plants
Texaco, Inc.—Davenport, Maysville plants.

Answer to Interrogatory No. III:

Stilwell Canning Company, Stilwell, Oklahoma;
Robinson Canning Company, Proctor, Oklahoma;
Jay Chicken Killing Plant, Jay, Oklahoma.

Answer to Interrogatory No. IV:

2,000 consumers in Oklahoma.

Answer to Interrogatory No. V:

30%

Answer to Interrogatory No. VI:

15%

[fol. 209] Answer to Interrogatory No. VII:

No Gasoline Transports;
Five Propane Transports
3 - 10,000 gallons
1 - 7225 gallons
1 - 5600 gallons

Answer to Interrogatory No. VIII:

No Certificates of Convenience, but we are checked by ICC and come under their authority.

Answer to Interrogatory No. IX:

13; Four in Oklahoma; One each at Stilwell, Westville, Kansas and Colcord, Oklahoma.

Answer to Interrogatory No. X:

90% Stilwell, Oklahoma, 100%
Westville, Oklahoma, 100%
Kansas, Oklahoma, 100%
Colcord, Oklahoma, 60%—40% in Arkansas

Answer to Interrogatory No. XI:

Colcord, Oklahoma—60% in Oklahoma, 40% in Arkansas. We give each truck a defined route. Part of the Colcord route is in Arkansas.

Answer to Interrogatory No. XII:

Maysville, Arkansas. 40% in Oklahoma; 40% in Arkansas; 20% in Missouri. Maysville, Arkansas is on the Arkansas-Oklahoma line and in the Northwest corner of Arkansas only five miles from Missouri.

Answer to Interrogatory No. XIII:

None

/s/ David M. Thornton
David M. Thornton
Attorney for plaintiffs

[fol. 210]

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

DEFENDANTS' EXHIBIT No. 2

THE ATTORNEY GENERAL OF OKLAHOMA
OKLAHOMA CITY, OKLAHOMA

May 23, 1963

[Stamp—Approved in Conference—5 Mo. 24 Day, 1963]

Re: Opinion No. 63-204

Honorable W. D. Rush, Administrator
Liquefied Petroleum Gas Administration
Will Rogers Memorial Office Building
Oklahoma City 5, Oklahoma

Dear Mr. Rush:

This will acknowledge receipt of your letter dated April 1, 1963, wherein you request an opinion of the Attorney General as to the proper procedure to pursue to put Senate Bill No. 122 into operation.

Senate Bill No. 122 was approved, including the emergency clause, on March 26, 1963, and provides as follows:

"BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

"SECTION 1. The State Liquefied Petroleum Gas Administrator shall not issue or renew any registration permit or license to any person, firm or corporation who is a resident of, or whose principal place of business is located in, a state other than Oklahoma unless the laws of such other state, and the rules and regulations of the authority governing the storage and dispensing of liquefied petroleum gas permit the operation of such business by citizens, firms or corporations

of Oklahoma under the same or substantially similar terms and conditions as those required for such operation in this State.

[fol. 211] "SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this Act shall take effect and be in full force from and after its passage and approval."

The Bill provides no procedure to be followed by the Administrator in carrying out the mandate contained therein. Section 420.6 of the Liquefied Petroleum Gases Act (52 O.S. 1961, §§ 420.1-420.13) sets out the procedure to be followed by the Administrator in proceedings to suspend or revoke registration permits; however, said section would have no application to the issuance or renewal of registration permits and licenses.

In the event the Administrator receives application for a registration permit or license from a resident of a state other than Oklahoma, and the Administrator is unaware of the laws, rules and regulations of such state and its regulatory authority governing the storage and dispensing of liquefied petroleum gas, he would, of necessity, be required to make a finding that such state's laws, and the rules and regulations of its regulating authority, permit the operation of such business by citizens, firms or corporations of Oklahoma under the same or substantially similar terms and conditions as those required for such operation in Oklahoma.

The Administrator has the implied authority, under the terms of the Bill, to adopt any reasonable method of procedure to make such finding. He could, if he deemed it necessary or expedient, require such applicant to prove to his satisfaction that such laws, rules and regulations of the applicant's state of residence meet the requirements of the Bill. However, he could use any other reasonable means to make such finding.

The Bill provides that the Administrator "shall not issue or renew" a permit or license "unless" the laws, etc., meet

the necessary requirements. Therefore, the Administrator must determine that such laws *do* meet the requirements before granting the permit or license. Unless and until the necessary finding is made, the Administrator is prohibited from issuing or granting permits or licenses to applicants residing in any such state.

[fol. 212] Talbott vs. Fidelity and Casualty Co. of New York, 74 Md. 536, 22 A. 394, is a well-reasoned case construing a retaliatory statute similar to Senate Bill No. 122. The Court of Appeals of Maryland upheld the action of the Maryland State Insurance Commissioner in refusing to renew the license of a New York Insurance company for the reason that the Insurance Superintendent of the state of New York had refused to license a Maryland insurance company because of certain prohibitions contained in the statutes of New York. In that case, the New York company made application for the renewal of its license, and was then advised by the Commissioner that the same would not be renewed.

It is the opinion of the Attorney General that the Administrator must not issue any registration permit or license to any applicant whose residence or principal place of business is located in a state other than Oklahoma unless such other state qualifies under the terms of the Bill. Although the Administrator may notify all permittees, licensees and applicants for permits and licenses who reside in non-conforming states that he will not issue or renew their permits or licenses, he is not required to do so. Although he may accord hearings to non-resident applicants, he is not required to do so; and although he may notify resident operators that he will issue and renew licenses to applicants residing in certain designated conforming states, so as to give such operators an opportunity to protest such designations, he is not required to do so.

Yours very truly,

FOR THE ATTORNEY GENERAL

HARVEY H. CODY
Assistant Attorney General

HHC:gld

[fol. 213]

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

DEFENDANTS' EXHIBIT No. 3

(See Opposite) ☞

L. P. G. Form No. 3B—7-1-37

RECEIPT No. 4433 FEE COLLECTED $1.75 PERMIT No. 5209

STATE LIQUEFIED PETROLEUM GAS ADMINISTRATOR OF OKLAHOMA

OFFICIAL PERMIT AND RECEIPT

IN CONSIDERATION of the Sum of One Hundred Seventy-five DOLLARS

($1.75) represented by cash, or check drawn on Guaranty Trust Bank

receipt of which is hereby acknowledged, I, the undersigned Liquefied Petroleum Gas Administrator of the State of Oklahoma, do hereby grant to Lloyd Lucas Co. Inc. of Oklahoma City

State of Okla. Co., the right to engage in the transportation of and retailing of liquefied petroleum gas and the right to engage in the manufacture and/or assembly and sale of any apparatus to be used for the storage and dispensing of liquefied petroleum gas, as provided by H. B. No. 1017, Twenty-sixth Legislature for the period from date hereof, to and including the thirty-first day of August, 19 37.

THIS PERMIT is revocable and may be suspended upon violation of any of the provisions of said Act, or the violation of any order, rule, or regulation adopted by the Liquefied Petroleum Gas Administrator of Oklahoma.

ISSUED this, the 21 day of July A. D. 1937

Countersigned by:

W. F. [illegible]

L. P. G. Inspector—Clerk

Approved:

C. Chester Pate

C. CHESTER PATE
Liquefied Petroleum Gas Administrator

8

Void If Change Of Ownership or Name Of Firm

[fol. 214]

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

DEFENDANTS' EXHIBIT No. 4

AN ACT

Enrolled Senate Bill No. 122

BY: HAMILTON, BALDWIN, BARTLETT, BELVIN, BOECHER, COLSTON, DACUS, FIELD, FINE, GRANTHAM, HAM, McCOLGIN, McCOMAS, MURPHY, NICHOLS, PAYNE, SCHOEB, STEVENSON, STIPE, WILKERSON, and WILLIAMS of the SENATE

and

YATES; WILLIS (Cherokee), WELCH, WILLIAMS, BULL, TABOR, HOLDEN, HESSER, ODOM (Wagoner), HUNTER, THORNHILL, FITCH, VANDIVER, HARRISON, WILLIS (Love), BYNUM, HARPER, STEVENS, DAUGHERTY, PATTERSON, and MORGAN of the HOUSE

AN ACT RELATING TO LIQUEFIED PETOLEUM GASES; PROHIBITING STORAGE OR DISPENSING OF SUCH GASES IN OKLAHOMA BY PERSONS, FIRMS, OR CORPORATIONS OF OTHER STATES UNLESS THE LAWS OF SUCH STATES PERMIT SUCH OPERATION BY CITIZENS OF THIS STATE UNDER THE SAME OR SIMILAR TERMS AND CONDITIONS AS REQUIRED FOR OPERATION IN OKLAHOMA; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. The State Liquefied Petroleum Gas Administrator shall not issue or renew any registration permit or license to any person, firm, or corporation who is a resident of, or whose principal place of business is located in, a state other than Oklahoma unless the laws of such other state, and the rules and regulations of the authority governing the storage and dispensing of liquefied petroleum

Correctly Enrolled: RICHARD E. ROMANG, *Chairman*, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

gas permit the operation of such business by citizens, firms, or corporations of Oklahoma under the same or substantially similar terms and conditions as those required for such operation in this state.

SECTION 2. It being immediately necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

[fol. 215]

PASSED the Senate the 21st day of February, 1963.

/s/ ROY C. BOECHER
President *pro tempore* of the Senate

PASSED the House of Representatives the 20th day of March, 1963.

/s/ J. D. McCARTY
Speaker of the House of Representatives

OFFICE OF THE GOVERNOR
Received by the Governor this 25th
day of March, 1963, at 3, o'clock P.M.

By: /s/ MARIAN L. COX

Approved by the Governor of the State of Oklahoma the 26th day of March, 1963.

/s/ HENRY BELLMON
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE
Received by the Secretary of State
this 26 day of March, 1963, at 4:00,
o'clock P.M.

/s/ JAMES McBULLARD

By: /s/ A. JONES
md

Correctly Enrolled: RICHARD E. ROMANG, *Chairman*, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

[fol. 219] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA
No. 63-248 Civil

JACK GORUM, CHARLES GORUM and OZARK BUTANE COMPANY, INC., a Corporation, Plaintiffs,

vs.

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD and W. D. RUSH, Liquefied Petroleum Gas Administrator, Defendants,

and

OKLAHOMA LIQUEFIED PETROLEUM GAS ASSOCIATION, Intervenor.

David M. Thornton, Attorney for Plaintiff.
Charles Nesbitt, Attorney General of Oklahoma.
Lee W. Cook, Assistant Attorney General of Oklahoma, Attorneys for Defendants.

Duke Duvall, Duvall and Heard, Attorney for Intervenor.

Before: Pickett, Circuit Judge, Bohanon and Daugherty, District Judges.

MEMORANDUM OPINION—BY DAUGHERTY, DISTRICT JUDGE—February 17, 1964

[fol. 220] In this case the plaintiffs invoke the jurisdiction of a three-judge federal court under the provisions of Title 28, United States Code, Sections 2281 et seq., to obtain a decree that Title 52 Oklahoma Statutes Annotated, 420.14 is unconstitutional and void by reason of said law denying them (1) the privileges and immunities as citizens of the several states, (2) the equal protection of the laws, and,

(3) due process of law, all in violation of the 14th Amendment to the United States Constitution, and said law as applied is (4) an unreasonable interference with interstate commerce and (5) is an arbitrary, discriminatory and excessive exercise of the police power of the State of Oklahoma.

Title 52 O. S. A. 420.14 passed by the 1963 session of the Oklahoma State Legislature provides as follows:

> "Section 1. Nonresidents—Prohibition on storage or dispensing.
>
> "The State Liquefied Petroleum Gas Administrator shall not issue or renew any registration permit or license to any person, firm, or corporation, who is a resident of, or whose principal place of business is located in, a state other than Oklahoma unless the laws of such other state, and the rules and regulations of the authority governing the storage and dispensing of liquefied petroleum gas permit the operation of such business by citizens, firms, or corporations of Oklahoma under the same or substantially similar terms and conditions as those required for such operation in this state."

Plaintiff corporation the Ozark Butane Company, Inc., is an Arkansas corporation domesticated to do business in Oklahoma. The plaintiffs Jack Gorum and Charles Gorum are individuals, residents of Arkansas, and stockholders of the plaintiff corporation. The defendant Oklahoma Liquefied Petroleum Gas Board is a regulatory administrative agency of the State of Oklahoma created by Title 52 O. S. A. 420.3. Defendant W. D. Rush is the Administrator of said Board. This Board promulgates rules and regulations and enforces the laws of the State of Oklahoma relating to the liquefied petroleum gas industry in the State of Oklahoma.

The intervenor Oklahoma Liquefied Petroleum Gas Association is an association of liquefied petroleum gas dealers doing business in Oklahoma. Said association through intervention supports the position taken here by the defendant Board and its Administrator.

[fol. 221]

The plaintiff corporation is engaged in the wholesale and retail transportation, distribution, purchase and sale of liquefied petroleum gas with installations and customers in both Oklahoma and Arkansas. In the past it has been issued a registration permit by the defendant Board to so engage in such activities in Oklahoma under the provisions of Title 52 O. S. A. 420.4. Such a registration permit expires on September 1st of each year. The last registration permit issued to the plaintiff corporation Ozark Butane Company, Inc., by the defendant Board expired on September 1, 1963. The defendant Board upon application refused to issue the plaintiff corporation a registration permit for the year September 1, 1963, to August 31, 1964, by reason of the provisions of Title 52 O. S. A. 420.14 passed by the 1963 Oklahoma Legislature as said law is applied to the plaintiff corporation. This refusal of the defendant Board was in conformity with the legal opinion of the Attorney General of the State of Oklahoma.

The operation of the plaintiff corporation involves the purchase of liquefied petroleum gas at locations in Oklahoma, its transportation by plaintiff corporation transport trucks to its plant in Siloam Springs, Arkansas, where it is stored in facilities there located, its subsequent transportation by other plaintiff corporation transport trucks to installations in Oklahoma (there being four of such in Oklahoma), where it is again stored and subsequently moved from said storage and sold by plaintiff corporation to its customers in Oklahoma.

At the pre-trial hearing herein the parties agreed that for the purposes of this litigation the laws, rules and regulations of the State of Arkansas regarding the transportation, storage and dispensing of liquefied petroleum gas do not permit the operation of such business under the same or substantially similar terms and conditions as those required by the laws, rules and regulations of the State of Okla- [fol. 222] homa.[1]

---

[1] Compare 52 O. S. A. 420.1 to 420.14 with 53 Ark. Stat. 702 to 728.

If the statutes of the two states contained similar terms and conditions the remedy of the plaintiff corporation would be to compel the issuance of the desired registration permit and not to attack the law as being unconstitutional and void, which is the relief prayed for herein by the plaintiff corporation.

From the evidence in this case the liquefied petroleum gas operation in Oklahoma which is involved herein appears to be accomplished entirely by the plaintiff corporation, an Arkansas corporation, as such. The plaintiff corporation was the recipient of past Oklahoma registration permits and made the application for an Oklahoma registration permit which was rejected and is now involved in this litigation. It does not appear that either of the individual plaintiffs individually applied for the above mentioned registration permit which was denied by the defendants. They do refer to their individual installation permits in Oklahoma in the Complaint but offered no evidence in connection with such type permits. The evidence indicates that an Oklahoma company was formed by the individual plaintiffs for the purpose of making an application for a registration permit in Oklahoma but such company is a separate entity and is not a party hereto. Furthermore, the evidence indicates that such Oklahoma company abandoned its efforts to obtain a registration permit in Oklahoma. The individual plaintiffs must therefore be treated as surplus and unnecessary parties herein.

The grounds of attack against said law urged by the plaintiff corporation will be treated in the order above set out.

[fol. 223] With reference to said law denying the plaintiff corporation the privileges and immunities of the citizens of the several states, this ground of complaint is answered by the holdings that such privileges and immunities are afforded only to individuals and not to corporations. See Asbury Hospital v. Cass County, North Dakota, 326 U. S. 207, and Sellover Bates & Co. v. Walsh, 226 U. S. 712.

With reference to said law denying the plaintiff corporation the equal protection of the laws, it is true that the plaintiff corporation is a person and is entitled to this

protection if within the jurisdiction of the state. However, it is found that since September 1, 1963, the plaintiff corporation has not been within the jurisdiction of the State of Oklahoma as required before being entitled to such protection. This is so because since said date the plaintiff corporation has not satisfied the conditions required by the State of Oklahoma in order for it as a foreign corporation to be entitled to enter and do business in Oklahoma in connection with liquefied petroleum gas operations. The case of Fire Association of Philadelphia v. New York, 119 U. S. 110, 30 L. Ed. 342, holds:

> "The state having the power to exclude entirely, has the power to change the conditions of admission at any time, for the future, and to impose as a condition the payment of a new tax, or a further tax, as a license fee. If it imposes such license fee as a prerequisite for the future, the foreign corporation, until it pays such license fee, is not admitted within the state or within its jurisdiction. It is outside, at the threshold, seeking admission, with consent not yet given. * * * It could not be of right within such jurisdiction, until it should receive the consent of the state to its entrance therein under the new provision; and such consent could not be given until the tax, as a license fee for the future, should be paid."

The fact that the plaintiff corporation was within the State of Oklahoma prior to September 1, 1963, is of no avail after that date unless the changed conditions, which the State of Oklahoma had a right to impose, are met as when required. Nor is the fact that the plaintiff corporation has been permitted to continue to operate in Oklahoma since September 1, 1963, under and by virtue of a temporary restraining order of this Court which was extended [fol. 224] by agreement of the parties, sufficient to put the plaintiff corporation within the State of Oklahoma with the consent of the State of Oklahoma, or within the meaning and purview of the equal protection clause of the 14th Amendment. See Fire Assn. of Phila. v. New York, supra. Nor is the fact that the plaintiff corporation (for the first

time) a few days before September 1, 1963, "domesticated" as a foreign corporation with the appropriate agency of the State of Oklahoma sufficient to put the plaintiff corporation within the State of Oklahoma within the meaning and purview of the equal protection clause of the 14th Amendment. The right of the plaintiff corporation to engage in the liquefied petroleum gas business in Oklahoma depends upon the issuance of the said annual registration permit by the State of Oklahoma, as provided by its laws. When there are both general laws and special laws relating to the right of a foreign corporation to do business within a state, the special laws are controlling and must be complied with. St. Louis Ry. Co. vs. Commercial Ins. Co., 139 U. S. 223; Central Life Assurance Society vs. Tiger, 117 Okl. 108, 57 P. 2d 1182.

Plaintiff urges the case of City of St. Paul vs. Dalsin (Minn. 1955), 71 N. W. 2d 855, as being decisive herein. This case is clearly distinguishable from the situation at bar. In St. Paul the Court was concerned with an individual who was a citizen of Minneapolis, Minnesota, and within the State of Minnesota complaining about a St. Paul, Minnesota, ordinance which imposed conditions on him not required of other individuals who were non-residents of St. Paul. Here, we are concerned with a foreign corporation, not within the state, but desiring to enter and do business within the state but unable to comply with the conditions prescribed and required by the state before such permission is granted.

With reference to said law denying the plaintiff corporation due process of law, it is clear from the authorities that a state may entirely bar a foreign corporation from doing business in the state. See The LaFayette Ins. Co. v. French, 18 How. 404, 15 L. Ed. 451; The Horn Silver [fol. 225] Mining Co. v. The People of the State of New York, 143 U. S. 305, 36 L. Ed. 164; Hanover Fire Ins. Co. v. Carr, 272 U. S. 494, 71 L. Ed. 372; Lincoln Nat. Ins. Co. v. Read, 325 U. S. 673, 89 L. Ed. 1861. Moreover, a state may impose conditions upon a foreign corporation which must be satisfied before the foreign corporation may do business in the state, provided, the conditions are not repugnant to the Constitution or laws of the United States.

See The LaFayette Ins. Co. v. French, supra. The case of Asbury Hospital v. Cass County, North Dakota, supra, provides that the 14th Amendment to the United States Constitution does not deny to a state the power to exclude a foreign corporation from doing business within it. Furthermore, there is not a denial of due process because a foreign corporation permitted to do business in a state acquires property in the state during such privilege and then must dispose of such property later on when new conditions to do business are imposed which cannot be met.

With reference to said law being an interference with interstate commerce, the activities and operations of plaintiff corporation in Oklahoma amount to intrastate commerce and not interstate commerce.

From the evidence adduced it is apparent that plaintiff's over-all operations traverse state boundaries in the transportation and sale of liquefied petroleum gas. The business headquarters of plaintiff is in the State of Arkansas. Orders are received and billings sent out from this point. However, plaintiff transports its gas from Arkansas and places it in storage tanks located in Oklahoma. Said gas is subsequently sold and delivered to Oklahoma consumers as it is needed. Upon reaching these storage tanks in Oklahoma the interstate aspect of the operation ends. The subsequent sale and movement of the gas is an intrastate activity and a purely local business clearly subject to local business controls. See 60 A. L. R. 1479, section e; Fletcher Vol. 17, section 8419, and cases thereunder. That local liquefied petroleum gas operations is such an activity over which the local authorities may prescribe appropriate regulations is not to be seriously questioned. The gas stored [fol. 226] by plaintiff in Oklahoma has come to rest in a place wherein it is to be used or finally disposed of. Property so situated undoubtedly may be taxed by the state wherein it is located though in the current of interstate commerce. Minnesota v. Blasius, 290 U. S. 1, 78 L. Ed. 131. The purely local nature of the activity here in question is evident. A state may regulate matters of local concern over which Federal authority has not been exercised even though the regulation has some impact on interstate commerce, provided, that the regulation does not discriminate

against or place an embargo on interstate commerce, that it safeguards an obvious state interest and the local interest outweighs whatever national interest there might be in the prevention of state regulation. Cities Service Gas Co. v. Peerless Oil and Gas Co., et al., 340 U. S. 179, 95 L. Ed. 190. As viewed by this Court the storage and sale of liquefied petroleum gas in Oklahoma is an intrastate activity carried on by a foreign corporation therein and a matter of local concern. The regulation of such industry and activity is a proper exercise of the state's power. Should, however, the over-all operation, considering that there are present interstate aspects, be sufficiently impressed with the interstate quality so as to retain such status—as relates to the functions within Oklahoma—it is felt that the regulations imposed are not an unreasonable burden upon interstate commerce and that the local nature of the activity and the obvious state interest outweighs the national interest as is envisioned by the commerce clause of the United States Constitution. Panhandle Eastern P. L. Co. v. Michigan Public Service Comm., 341 U. S. 329, 95 L. Ed. 993. There is no absolute prohibition here of interstate commerce nor an embargo against it. The regulations are a reasonable control of a matter of a local nature and of local concern.

With reference to the last ground of attack, namely, that said law amounts to an abuse of the police power of the State of Oklahoma, the Court fails to find that this principle of law is involved in the facts of this case. We are here [fol. 227] confronted with a situation concerning the right of a state to bar a foreign corporation from doing business within it or impose conditions to be met prior to the exercise of such privilege. Since the state may entirely bar a foreign corporation from doing business within its confines it naturally follows that a state may impose any conditions it sees fit, provided the Constitution and laws of the United States are not violated. The United States Supreme Court said in Paul v. Virginia, 8 Wall. 168:

> "Having no absolute right of recognition in other states, but depending for such recognition and enforcement of its contracts upon their assent, it follows as a matter of course, that such assent may be granted upon such terms and conditions as those states may think

proper to impose. They may exclude the foreign corporation entirely, they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion."

We have shown above that the privileges and immunities clause, the equal protection of the laws clause, the due process of law clause, and the interstate commerce provisions of the United States Constitution and laws, are not violated. The police power of the state is simply not here involved. The exercise of police power by a state is aimed at the conduct, activities and operations of people within the state in the interest of the health, welfare and safety of the people of the state in general. If the plaintiff corporation were permitted to enter Oklahoma and engage in the liquefied petroleum gas business therein under a registration permit, then the plaintiff corporation would be subject in its operation to comply with the pertinent laws, rules and regulations prescribed by the State of Oklahoma in the exercise of its police power in regulating the liquefied petroleum gas industry within its borders. The plaintiff corporation since September 1, 1963, has ceased to be subject to the police power regulations of Oklahoma save only by temporary restraining order of this Court, entered to hold the status quo and not to grant any permanent rights to the plaintiff corporation.

[fol. 228] In view of the foregoing, the Court finds that Title 52 O. S. A. 420.14 is valid and constitutional as applied to the plaintiff corporation. Accordingly, the Complaint herein should be dismissed and the temporary restraining order held in effect herein by agreement should be dissolved. Counsel for the defendants will prepare a judgment to such effect for the signature of the Court and entry herein.

Dated this 17 day of February, 1964.

John C. Pickett, United States Circuit Judge.
Luther Bohanon, United States District Judge.
Fred Daugherty, United States District Judge.

[fol. 229] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA
No. 63-248 Civil

JACK GORUM, CHARLES GORUM, and CLARK BUTANE COMPANY, INC., a Corporation, Plaintiffs,

vs.

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD, and W. D. RUSH, Liquefied Petroleum Gas Administrator, Defendants,

and

OKLAHOMA LIQUEFIED PETROLEUM GAS ASSOCIATION, Intervenor.

JUDGMENT—April 16, 1964

The above entitled and numbered cause coming on to be heard on the merits on the 1st day of November, 1963, at 9:30 a.m., pursuant to order of the Court, said plaintiffs being present by its attorney, David M. Thornton, the defendants, by Lee W. Cook, Assistant Attorney General of Oklahoma, and intervenor, by its attorney, Duke Duvall, and the Court having heard the facts stipulated by all parties, the evidence and arguments of counsel, and upon due consideration of the briefs filed herein and being fully advised in the premises, finds that the plaintiff should be denied the relief prayed for in its complaint, it is therefore,

Ordered, Adjudged and Decreed, that Senate Bill No. 122 of the 1963 Oklahoma Legislature, officially designated as [fol. 230] 52 O. S. Supp. 1963, § 420.14, is valid and constitutional as set forth in the Court's memorandum opinion filed herein on the 17th day of February, 1964; that the complaint filed herein is hereby dismissed and the tem-

porary restraining order heretofore entered and held in effect by agreement of counsel is hereby dissolved.

Dated this 16th day of April, 1964.

John C. Pickett, United States Circuit Judge.
Luther Bohanon, United States District Judge.
Fred Daugherty, United States District Judge.

Approved as to Form:

David M. Thornton, Attorney for Plaintiff.
Lee W. Cook, Attorney for Defendant.
Duke Duvall, Attorney for Intervenor.

Judgment Entered in Civil Docket on Apr 16 1964
Adelaide Holston, Deputy.

[fol. 231] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 63-248-Civil

JACK GORUM, CHARLES GORUM and OZARK BUTANE COMPANY, INC., a corporation, Plaintiffs,

vs.

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD and W. D. RUSH, Liquefied Petroleum Gas Administrator, Defendants,

and

OKLAHOMA LIQUEFIED PETROLEUM GAS ASSOCIATION, Intervenor.

ORDER OVERRULING PLAINTIFFS' MOTION FOR NEW TRIAL—June 12, 1964

Upon consideration of plaintiffs' Motion for a New Trial and supporting brief and the answer brief filed to said Motion by the defendants, the Court is of the opinion that said Motion for New Trial should be denied.

It is, therefore, ordered that the plaintiffs' Motion for New Trial is denied and the order staying execution of judgment entered herein by the Court under date of April 16, 1964, is vacated and of no further force and effect.

Dated this 12 day of June, 1964.

John C. Pickett, United States Circuit Judge.
Luther Bohanon, United States District Judge.
Fred Daugherty, United States District Judge.

[fol. 232] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 63-248 Civil

[Title omitted]

NOTICE OF APPEAL OF OZARK BUTANE COMPANY, A CORPORATION, TO THE SUPREME COURT OF THE UNITED STATES—Filed June 16, 1964.

1. Notice is hereby given that Ozark Butane Company, Inc., a corporation, one of the Plaintiffs above named, hereby appeals to the Supreme Court of the United States from a judgment for Defendants denying Plaintiff injunctive relief and upholding the Constitutionality of a State statute, entered in this action on April 16, 1964. Motion for New Trial was filed within 10 days of the entry of said judgment and denied by Order entered June 12, 1964.

This appeal is taken pursuant to 28 U.S. Code Sec. 1253.

2. The Clerk will please prepare a transcript of the record in the cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. The Complaint and all subsequent pleadings, including the Answer; Interrogatories and Answer to Interrogatories; an Application for Temporary Restraining Order and the Order of Court granting same; a copy of the Temporary Restraining Order; a tran-

script of the trial on the merits; the Memorandum Opinion and judgment entered thereon; the Motion for New Trial and Application for Stay of Execution pending disposition of same and Brief submitted in support thereof; Order of Court overruling Plaintiffs' Motion [fol. 233] for New Trial and vacating the stay of execution entered June 12, 1964, and other essential documents in the record.

3. The following questions are presented by this appeal:

1. Does the evidence establish that the Plaintiff is engaged in Interstate Commerce?

2. Does Senate Bill 122 suppress competition by foreign corporations under the guise of equalization of economic advances, in violation of the Interstate Commerce clause of the U.S. Constitution?

3. Is Senate Bill 122 an excessive exercise of police power of the State of Oklahoma?

4. Is the Plaintiff a person within the jurisdiction of the State of Oklahoma and therefore entitled to equal protection of the laws, as provided by the Fourteenth Amendment to the U.S. Constitution?

5. Does Senate Bill 122 seek to exact from Plaintiff the surrender of its Constitutionally guaranteed right to have recourse to Federal Courts on the basis of diversity of citizenship by imposing upon it compulsory citizenship?

David M. Thornton, Counsel for Plaintiff.

Certificate of Mailing (omitted in printing).

[fol. 234] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 235]

SUPREME COURT OF THE UNITED STATES

No. 390—October Term, 1964

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—October 26, 1964

Appeal from the United States District Court for the Western District of Oklahoma.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

LE COPY

Office-Supreme Court, U.S.
FILED
AUG 15 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 390

OZARK BUTANE COMPANY, INC.,
a Corporation of the State of Arkansas, *Appellant*

v.

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD
and W. D. RUSH,
Liquefied Petroleum Gas Administrator, *Respondents*

**On Appeal From the United States District Court
For the Western District of Oklahoma**

JURISDICTIONAL STATEMENT

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WAYNE R. SCOTT CO. — LAW BRIEF PRINTING — 507 S. QUAKER, LUther 7-2052 — TULSA, OKLA.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No.

OZARK BUTANE COMPANY, INC.,
a Corporation of the State of Arkansas, *Appellant*

v.

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD
and W. D. RUSH,
Liquefied Petroleum Gas Administrator, *Respondents*

JURISDICTIONAL STATEMENT

OPINION BELOW

The memorandum opinion of the United States District Court for the Western District of Oklahoma was filed on February 17, 1964, and the judgment of the Court was entered on April 16, 1964. An order overruling appellants motion for a new trial was entered on June 12, 1964. The opinion, judgment and order have not as yet been reported.

JURISDICTION

This suit was instituted by the filing of a complaint

by appellant, a corporation of the State of Arkansas, in the United States District Court for the Western District of Oklahoma on June 25, 1963, pursuant to 28 U.S.C. Section 2281 et seq., to obtain a decree that Title 52 Oklahoma Statutes Annotated, Section 420.14 (52 O.S. 420.14) is unconstitutional, and requesting that a decree be entered adjoining the enforcement, operation or execution of 52 O.S. 420.14 and declaring the same to be unconstitutional.

It was alleged that 52 O.S. 420.14 denied to the appellant the equal protection of the laws and due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and that the said law as applied to appellant is an unreasonable interference with interstate commerce contrary to the Commerce Clause in Article 1, Section 8, Clause 3 of the Constitution of the United States, and that the law is an arbitrary, discriminatory and excessive exercise of the police power of the State of Oklahoma. Appellant was joined in its complaint by two individual persons who were and are officers and major stockholders of appellant. These parties had further complained to the Court that 52 O.S. 420.14 denied to them the privileges and immunities as citizens of the several states guaranteed by the Fourteenth Amendment to the Constitution of the United States. A statutory three judge Federal court was impaneled on August 6, 1963, but said impaneling order was thereafter vacated and a new panel was established on August 29, 1963. The United States District Court for the Western District of Oklahoma, in a memorandum opinion filed on February 17, 1964, sustained the validity of 52 O.S. 420.14, and by judgment entered on April 16, 1964 held the statute to be valid and constitutional, dismissing the complaint filed by appellant. On June 12, 1964 the Court issued its order denying appellant's motion for a new trial.

Notice of Appeal was filed by Ozark Butane Company, Inc., on June 16, 1964, with the United States District Court for the Western District of Oklahoma.

The jurisdiction of the Supreme Court of the United States to review the judgment of the United States District Court for the Western District of Oklahoma on appeal is confirmed by 28 U.S.C. Section 1253. That such jurisdiction exists in the circumstances of this case is sustained by the following decisions: *Harrison* v. *St. Louis & San Francisco Railroad Company*, 232 U.S. 318, 58 L. Ed. 621, 34 S. Ct. 333 (1914); *Donald* v. *Philadelphia & Reading Coal & Iron Co.*, 241 U.S. 329, 60 L. Ed. 1027, 36 S. Ct. 563 (1916); *Terral* v. *Burke Const. Co.*, 257 U.S. 529, 66 L. Ed. 352, 42 S. Ct. 188 (1922); *Airway Electric Appliance Corp.* v. *Day*, 266 U.S. 71, 69 L. Ed. 169, 45 S. Ct. 12 (1924); *Baldwin* v. *G.A.F. Seelig*, 294 U.S. 511, 79 L. Ed. 1032, 55 S. Ct. 497 (1935).

STATUTE INVOLVED

52 O.S. 420.14
Laws 1963, c.27, Sec. 1

> "The State Liquefied Petroleum Gas Administrator shall not issue or renew any registration permit or license to any person, firm, or corporation who is a resident of, or whose principal place of business is located in, a state other than Oklahoma unless the laws of such other state, and the rules and regulations of the authority governing the storage and dispensing of liquefied petroleum gas permit the operation of such business by citizens, firms or corporations of Oklahoma under the same or substantially similar terms and conditions as those required for such operation in this state."

The full text of Oklahoma law pertaining to the Liquefied Petroleum Gas business is found at 52 O.S. Chapter 8, Sections 420.1 to 420.14, inclusive.

QUESTIONS PRESENTED

Is the application of 52 O.S. 420.14 to Ozark Butane Company, Inc., an Arkansas corporation engaged in interstate commerce, prohibiting Ozark Butane Company, Inc., from engaging in business in the State of Oklahoma, in conflict with the Constitution of the United States, specifically:

1. The Commerce Clause in Article 1, Section 8, Clause 3 of the Constitution of the United States, because the law discriminates against interstate commerce by excluding appellant from doing business within the State of Oklahoma?

2. The equal protection clause of the Fourteenth Amendment to the Constitution of the United States because the law excludes appellant from continuing the conduct of its business within the State of Oklahoma?

3. The Constitutional right of the appellant to resort to the Federal Courts, pursuant to 28 U.S.C., Section 1332, because the law would require appellant to become a citizen of the State of Oklahoma in order to continue the conduct of its business therein.

STATEMENT

Ozark Butane Company, Inc., an Arkansas corporation domesticated to do business in Oklahoma, is engaged in the wholesale and retail transportation, distribution, purchase and sale of liquefied petroleum gas with installations in Oklahoma and Arkansas and with customers in Oklahoma, Arkansas and Missouri. Since the inception of the

corporation in 1946, its principal place of business has been in Siloam Springs, Arkansas. which is practically at the border of Oklahoma. All of its purchases of gas are made in the State of Oklahoma, and all of the gas so purchased is transported directly to its plant at Siloam Springs, Arkansas. where it is stored in facilities there located. The gas is subsequently transported to local installations in Oklahoma and in Arkansas, where it is again stored and subsequently moved and sold by Ozark Butane Company, Inc., to its customers. All of the transportation is conducted by the appellant, and in trucks owned by the appellant.

Some of the gas brought back and placed into Oklahoma storage tanks is thereafter delivered to customers in Arkansas; similarly some of the gas which is stored in local installations in Arkansas is transported and sold direct to customers in both Oklahoma and Missouri.

Since 1946 the appellant has been issued an annual license to carry on its business in and through Oklahoma where it has acquired extensive property and valuable business interests. Approximately one-third of appellant's business is carried on in and through the State of Oklahoma. Approximately thirty percent of its gross revenues are received from sales in the State of Oklahoma.

The respondent, Oklahoma Liquefied Petroleum Gas Board, is a regulatory administrative agency of the State of Oklahoma created by 52 O.S. 420.3, and respondent W. D. Rush was the Administrator of said Board. Ed T. Sabin is now the Administrator. This Board administers 52 O.S. 420.14, the statute complained of herein. In the past the Board has issued a registration permit annually to the appellant, which permit expires on September 1st of each year. The last registration permit issued by the Board to Ozark Butane Company, Inc. expired on September 1, 1963.

On March 26, 1963, Oklahoma Senate Bill No. 122 was signed into law by the Governor of the State of Oklahoma, and has been codified as 52 O.S. 420.14. Thereafter, on May 23, 1963, the Attorney General of the State of Oklahoma, in Opinion No. 63-204, advised the respondent concerning the administration to be followed in carrying out the purposes of 52 O.S. 420.14. (Defendant's Exh. No. 2). On May 27, 1964, the respondents wrote to an officer of appellant, advising him of the opinion by the Attorney General, and further informing him that because the laws, rules and regulations of the State of Arkansas do not meet the requirements of Oklahoma law, appellant's permit to operate in the liquefied petroleum gas business in Oklahoma would not be renewed on September 1, 1963. (Plaintiff's Exh. No. 8). On July 16, 1963 the respondents wrote to appellant, and after referring to the earlier letter of May 27 and the opinion of the Attorney General of May 23, refused and returned the application theretofore submitted by appellent for a renewal of its permit. (Plaintiff's Exh. No. 9). The refusal to renew appellant's permit was based solely upon the provisions of 52 O.S. 420.14, and was in conformity with the opinion of the Attorney General of the State of Oklahoma.

On July 25, 1963, appellant filed a complaint with the United States District Court for the Western District of Oklahoma, requesting that a statutory three judge Federal court be impaneled, pursuant to 28 U.S.C. Section 2281, for the purpose of entering a decree enjoining the enforcement, operation or execution of 52 O.S. 420.14, and declaring the said statute to be unconstitutional, and further, to restrain the respondents from enforcing or executing the said statute. Appellant further prayed that the respondents be mandatorily enjoined to renew the permit of Ozark Butane Company, Inc., for the ensuing year.

On August 30, 1963, the Court issued a temporary restraining order prohibiting the enforcement of 52 O.S. 420.14 against the appellant and ordering the respondents to issue to the appellant a temporary license to operate in Oklahoma pending the final determination of this action. Thereafter, on September 18, 1963, the Court ordered that the temporary restraining order, above described, would continue in effect until the matter was presented on its merits.

On October 18, 1963, a Motion to Intervene was filed by the Oklahoma Liquefieid Petroleum Gas Association. The Court granted leave to intervene on the same date. Thereafter the said intervenor, through intervening as "amicus curae" in pursuit of its own economic interests, joined the respondents in support of the statute, in opposition to the appellant.

Trial on the merits was held on November 1, 1963. On February 17, 1964 the United States District Court for the Western District of Oklahoma, in a memorandum opinion by District Judge Daugherty, found that 52 O.S. 420.14 was valid and constitutional as applied to the appellant and that the complaint should be dismissed and the temporary restraining order should be dissolved. The opinion found that Ozark Butane Company, Inc., had not been within the jurisdiction of the State of Oklahoma since September 1, 1963, and therefore was not entitled to equal protection of the laws pursuant to the Fourteenth Amendment. The Court found this to be so because since September 1, 1963, appellant had not satisfied the conditions required by the State of Oklahoma in order for it to do business in Oklahoma. The Court further held that the application of 52 O.S. 420.14 did not deny the appellant due process of law, holding that the Fourteenth Amendment does not deny to a state the power to exclude a foreign corporation from doing business

within it. Finally, the Court found that the activities and operations of Ozark Butane Company, Inc., in Oklahoma amount to intrastate commerce and not interstate commerce. The Court noted that if the said operations were considered to be interstate commerce, the regulations imposed by 52 O.S. 420.14 would not constitute an unreasonable burden upon interstate commerce. Judgment was entered on April 16, 1964, dismissing the complaint and dissolving the temporary restraining order.

On April 16, 1964 Ozark Butane Company, Inc. applied for a stay of execution of the judgment stating that a motion for rehearing and supporting brief would be filed within the ten days allowed under Rule 59 F.R.C.P. On the same date, the Court issued an order staying execution of the judgment pending final disposition of the motion for rehearing.

On June 12, 1964 the United States District Court for the Western District of Oklahoma denied the motion for a new trial, and vacated the order staying execution of judgment.

On June 16, 1964 Ozark Butane Company, Inc., filed with the United States District Court for the Western District of Oklahoma a notice of appeal to the Supreme Court of the United States. On June 17 appellant applied to the Court to stay the execution of the judgment and to continue in effect the restraining order dated August 30, 1963, pending disposition of its appeal to the Supreme Court of the United States. On July 2, 1964 the United States District Court for the Western District of Oklahoma ordered that the judgment filed on April 16, 1964 be stayed and the restraining order dated August 30, 1963 be continued in effect pending final disposition of appellant's appeal to the Supreme Court of the United States.

THE QUESTIONS ARE SUBSTANTIAL

This appeal presents important constitutional questions involving the right of a state by means of retaliatory legislation to exclude persons from other states from doing business within its borders. The precise points in issue have not been settled by this Court, but, based upon the fundamental principles heretofore enunciated in the decisions of this Court, it is believed that the application of 52 O.S. 420.14 to Ozark Butane Company, Inc., is in violation of the Constitution and Statutes of the United States. In no prior case has such a retaliatory statute, directly suppressing interstate commerce and denying both the equal protection of the laws and due process of the law to a corporation engaged in interstate commerce within the state involved, been upheld by this Court.

1. The state statute involved herein has been aptly described by the Attorney General of the State of Oklahoma as a "retaliatory statute." (Defendant's Exhibit No. 2). The Court below attempted to avoid the said designation by finding that the appellant was not engaged in interstate commerce in the State of Oklahoma. This finding is contrary to the evidence of record and to the description and definition of interstate commerce as given in *United States* v. *Swift & Co.* 122 Fed. 529 (1903), which definition is set out and approved in *United States* v. *Southeastern Underwriters Association* 322 U.S. 533, 88 L. Ed. 1440, 64 S. Ct. 1162 (1944).

Viewing the business of Ozark Butane Company, Inc. as an entirety, as contemplated by the definition in Swift, each phase in each movement calculated to bring about an eventual act of exchange reaches into two or more states. This is particularly apparent in the answers to the inter-

rogatories propounded by defendants below, and set forth in defendants' Exhibit No. 1.

Though it is agreed that a state may impose reasonable burdens upon interstate commerce and reasonably interfere with its free flow through proper regulations pursuant to a legitimate exercise of its police power, a state cannot exclude from its jurisdiction a corporation legitimately engaged in interstate commerce. *Western Union Telegraph Co.* v. *Kansas* 216 U.S. 1, 54 L. Ed. 355, 30 S. Ct. 190 (1909).

In *Baldwin* v. *G.A.F. Seelig,* 294 U.S. 511, 79 L. Ed. 1032, 55 S. Ct. 497 (1935), this Court struck down similar retaliatory legislation which sought to exclude from a state a corporation domesticated in another state. In *Baldwin,* a New York statute sought to prohibit the sale within the State of milk brought from outside the State. The intention was to protect and promote the economic welfare of the farmers of New York. This Court held, however, that such a restriction, where not based upon reasonable extension of the police power of the state, would be contrary to the intent and purpose of the commerce clause, since such open rivalries and reprisals by the states were meant to be averted by subjecting commerce between the states to the power of the Federal Government.

In *Hood* v. *Dumond* 336 U.S. 525, 93 L. Ed. 865, 69 S. Ct. 657 (1949), this Court similarly struck down a New York Statute the effect of which was to suppress interstate commerce. Once again, this Court held in the *Hood* case that the obstruction and burden upon interstate commerce was such that it could not be condoned as a reasonable extension of the police power of the state.

In the instant proceeding the State of Oklahoma has sought to exclude the appellant from continuing to conduct

its interstate business in the State of Oklahoma. The sole purpose of the statute involved is to protect the economic welfare of Oklahoma competitors of the appellant. There is no allegation or contention that the statute is designed for public safety or the protection of consumer interests. As in the *Baldwin* and *Hood* cases, such an obstruction to the free flow of commerce cannot be condoned in the absence of a valid extension of the police power of the state. It is appellant's contention herein that the state has, through 52 O.S. 420.14, improperly and illegally prohibited it from the conduct of the interstate business in the State of Oklahoma.

2. The Court below has held that appellant can not be heard to complain that it was denied equal protection of the laws or due process of the law by 52 O.S. 420.14 because the appellant had no standing in the State of Oklahoma. The Court reasoned that since appellant did not have the renewal license pursuant to 52 O.S. 420.14, it was not properly within the State, and was not, therefore, entitled to the protections of the Fourteenth Amendment to the Constitution of the United States. By this reasoning the court below has indirectly admitted what appellant herein contends—that prior to the enactment of 52 O.S. 420.14, appellant was properly within the jurisdiction of the State of Oklahoma and was entitled to the equal protection of the laws within this jurisdiction, but that the enactment of this retaliatory legislation was intended to and did effectively deprive appellant of the equal protection of the laws.

At the time 52 O.S. 420.14 was enacted, it is acknowledged by all that appellant was properly conducting its business within the State of Oklahoma, having been previously and properly licensed. In *Hanover Fire Ins. Co.* v. *Carr* 272 U.S. 494, 71 L. Ed. 372, 47 S. Ct. 179 (1926), this Court, expending the principal earlier enunciated in

Southern Railway Co. v. *Greene*, 216 U.S. 400, 54 L. Ed. 536, 30 S. Ct. 287 (1910), held that a distinction is to be made between foreign corporations seeking to enter the State for the first time and those which have been previously admitted and seek an annual renewal license to continue doing business. These cases hold that the issuance of the first license gives the foreign corporation a quasi-domestic citizenship entitling it to equal protection of the laws. Therefore, appellant, which was properly licensed to conduct operations in the State of Oklahoma over a period of 17 years, was entitled to the equal protection of the laws within the State of Oklahoma.

52 O.S. 420.14 imposes an unequal burden upon appellant, situated within its borders, as compared to the burden placed upon other individuals similarly situated, i.e. it imposes burdens on it which are not imposed upon other corporations which chance to come from states whose Liquefied Petroleum Gas Laws are not dissimilar. The imposition of such an unequal burden has been consistently held by this Court to be a denial of the equal protection of the laws. *Airway Electric Appliance Corporation* v. *Day*, 266 U.S. 71, 69 L. Ed. 169, 45 S. Ct. 12 (1924).

Ozark Butane Company, Inc., was entitled to the equal protection of the laws within the State of Oklahoma, but has been deprived of this protection by the application of 52 O.S. 420.14.

3. 52 O.S. 420.14 would require Ozark Butane Company, Inc., as a condition to renewal of its license, to remove its principal place of business from Arkansas to Oklahoma. The statute, as applied to the appellant, therefore employs compulsory citizenship as an alternative to expulsion from the state. As such the statute would destroy appellant's foreign character for diversity purposes in determining juris-

diction of the Federal Courts pursuant to 28 U.S.C. Section 1332.

State statutes which have directly or indirectly required a surrender of the right of foreign corporations to pursue causes in Federal Courts have been declared unconstitutional. *Harrison* v. *St. Louis & San Francisco Railroad Company*, 232 U.S. 318, 58 L. Ed. 621, 34 S. Ct. 333 (1914); *Donald* v. *Philadelphia & Reading Coal & Iron Co.*, 241 U.S. 329, 60 L. Ed. 1027, 36 S. Ct. 563 (1916); *Terral* v. *Burke Const. Co.*, 257 U.S. 529, 66 L. Ed. 352, 42 S. Ct. 188 (1922). These cases hold that it is beyond a states power to impose as a condition of doing business by foreign corporations, the surrender of their right to remove causes into the Federal Courts, whether this is exacted directly or indirectly through compulsory citizenship.

The court below did not consider this aspect of 52 O.S. 420.14 which was raised in Plaintiff's Motion for New Trial.

CONCLUSION

For the reasons above stated, the questions presented by this appeal are substantial and are of public importance. It is respectfully submitted that probable jurisdiction should be noted.

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APPENDIX

APPENDIX

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 63-248 Civil

JACK GORUM, CHARLES GORUM AND OZARK BUTANE COMPANY, INC., a corporation, *Plaintiffs*,

v.

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD AND W. D. RUSH, LIQUEFIED PETROLEUM GAS ADMINISTRATOR, *Defendants*,

and

OKLAHOMA LIQUEFIED PETROLEUM GAS ASSOCIATION, *Intervenor*.

David M. Thornton, Attorney for Plaintiff

Charles Nesbitt, Attorney General of Oklahoma,
Lee W. Cook, Assistant Attorney General of Oklahoma
Attorneys for Defendants.

Duke Duvall, Duvall and Mead
Attorney for Intervenor.

BEFORE PICKETT, *Circuit Judge*, BOHANNON and DAUGHERTY, *District Judges*.

MEMORANDUM OPINION—By Daugherty, District Judge

Memorandum Opinion

In this case the plaintiffs invoke the jurisdiction of a three-judge federal court under the provisions of Title 28, United States Code, Sections 2281 et seq. to obtain a

decree that Title 52 Oklahoma Statutes Annotated, 420.14 is unconstitutional and void by reason of said law denying them (1) the privileges and immunities as citizens of the several states, (2) the equal protection of the laws, and, (3) due process of law, all in violation of the 14th Amendment to the United States Constitution, and said law as applied is (4) an unreasonable interference with interstate commerce and (5) is an arbitrary, discriminatory and excessive exercise of the police power of the state of Oklahoma.

Title 52 O.S.A. 420.14 passed by the 1963 session of the Oklahoma State Legislature provides as follows:

> "Section 1. Nonresidents—Prohibition on storage or dispensing.
>
> "The State Liquefied Petroleum Gas Administrator shall not issue or renew any registration permit or license to any person, firm, or corporation, who is a resident of, or whose principal place of business is located in, a state other than Oklahoma unless the laws of such other states, and the rules and regulations of the authority governing the storage and dispensing of liquefied petroleum gas permit the operation of such business by citizens, firms, or corporations of Oklahoma under the same or substantially similar terms and conditions as those required for such operation in this state."

Plaintiff corporation the Ozark Butane Company, Inc., is an Arkansas corporation domesticated to do business in Oklahoma. The plaintiffs Jack Gorum and Charles Gorum are individuals, residents of Arkansas, and stockholders of the plaintiff corporation. The defendant Oklahoma Liquefied Petroleum Gas Board is a regulatory administrative agency of the State of Oklahoma created by Title 52 O.S.A. 420.3. Defendant W .D. Rush is the Administrator of said Board. This Board promulgates rules and regulations and

enforces the laws of the State of Oklahoma relating to the liquefied petroleum gas industry in the State of Oklahoma.

The intervenor Oklahoma Liquefied Petroleum Gas Association is an association of liquefied petroleum gas dealers doing business in Oklahoma. Said association through intervention supports the position taken here by the defendant Board and its Administrator.

The plaintiff corporation is engaged in the wholesale and retail transportation, distribution, purchase and sale of liquefied petroleum gas with installations and customers in both Oklahoma and Arkansas. In the past it has been issued a registration permit by the defendant Board to so engage in such activities in Oklahoma under the provisions of Title 52 O.S.A. 420.4. Such a registration permit expires on September 1st of each year. The last registration permit issued to the plaintiff corporation Ozark Butane Company, Inc., by the defendant Board expired on September 1, 1963. The defendant Board upon application refused to issue the plaintiff corporation a registration permit for the year September 1, 1963, to August 31, 1964, by reason of the provisions of Title 52 O.S.A. 420.14 passed by the 1963 Oklahoma Legislature as said law is applied to the plaintiff corporation. This refusal of the defendant Board was in conformity with the legal opinion of the Attorney General of the State of Oklahoma.

The operation of the plaintiff corporation involves the purchase of liquefied petroleum gas at locations in Oklahoma, its transportation by plaintiff corporation transport trucks to its plant in Siloam Springs, Arkansas, where it is stored in facilities there located, its subsequent transportation by other plaintiff corporation transport trucks to installations in Oklahoma (there being four of such in Oklahoma), where it is again stored and subsequently moved from said storage and sold by plaintiff corporation to its customers in Oklahoma.

At the pre-trial hearing herein the parties agreed that for the purposes of this litigation the laws, rules and regulations of the State of Arkansas regarding the transportation, storage and dispensing of liquefied petroleum gas do not permit the operation of such business under the same or substantially similar terms and conditions as those required by the laws, rules and regulations of the State of Oklahoma.[1]

If the statutes of the two states contained similar terms and conditions the remedy of the plaintiff corporation would be to compel the issuance of the desired registration permit and not to attack the law as being unconstitutional and void, which is the relief prayed for herein by the plaintiff corporation.

From the evidence in this case the liquefied petroleum gas operation in Oklahoma which is involved herein appears to be accomplished entirely by the plaitiff corporation, an Arkansas corporation, as such. The plaintiff corporation was the recipient of past Oklahoma registration permits and made the application for an Oklahoma registration permit which was rejected and is now involved in this litigation. It does not appear that either of the individual plaintiffs individually applied for the above mentioned registration permit which was denied by the defendants. They do refer to their individual installation permits in Oklahoma in the Complaint but offered no evidence in connection with such type permits. The evidence indicates that an Oklahoma company was formed by the individual plaintiffs for the purpose of making an application for a registration permit in Oklahoma but such company is a separate entity and is not a party hereto. Furthermore, the evidence indicates that such Oklahoma company abandoned its efforts to obtain a registration permit in Oklahoma. The individual plaintiffs must therefore be treated as surplus and unnecessary parties herein.

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[1] Compare 52 O.S.A. 420.1 to 420.14 with 53 Ark. Stat. 702 to 728.

The grounds of attack against said law urged by the plaintiff corporation will be treated in the order above set out.

With reference to said law denying the plaintiff corporation the privileges and immunities of the citizens of the several states, this ground of complaint is answered by the holdings that such privileges and immunities are afforded only to individuals and not to corporations. See Asbury Hospital v. Cass County, North Dakota, 326 U.S. 207, and Sellover Bates & Co. v. Walsh, 226 U.S. 712.

With reference to said law denying the plaintiff corporation the equal protection of the laws, it is true that the plaintiff corporation is a person and is entitled to this protection if within the jurisdiction of the state. However, it is found that since September 1, 1963, the plaintiff corporation has not been within the jurisdiction of the State of Oklahoma as required before being entitled to such protection. This is so because since said date the plaintiff corporation has not satisfied the conditions required by the State of Oklahoma in order for it as a foreign corporation to be entitled to enter and do business in Oklahoma in connection with liquefied petroleum gas operations. The case of Fire Association of Philadelphia v. New York, 119 U.S. 110, 30 L. Ed. 342, holds:

> "The state having the power to exclude entirely, has the power to change the conditions of admission at anytime, for the future, and to impose as a condition the payment of a new tax, or a further tax, as a license fee. If it imposes such license fee as a prerequisite for the future, the foreign corporation, until it pays such license fee, is not admitted within the state or within its jurisdiction. It is outside, at the threshold, seeking admission, with consent not yet given. * * * It could not be of right within such jurisdiction, until it should receive the consent of the state to its entrance therein under the new provisions; and

such consent could not be given until the tax, as a license fee for the future, should be paid."

The fact that the plaintiff corporation was within the State of Oklahoma prior to September 1, 1963, is of no avail after that date unless the changed conditions, which the State of Oklahoma had a right to impose, are met as and when required. Nor is the fact that the plaintiff corporation has been permitted to continue to operate in Oklahoma since September 1, 1963, under and by virtue of a temporary restraining order of this Court which was extended by agreement of the parties, sufficient to put the plaintiff corporation within the State of Oklahoma with the consent of the State of Oklahoma, or within the meaning and purview of the equal protection clause of the 14th Amendment. See Fire Assn. of Phila. v. New York, supra. Nor is the fact that the plaintiff corporation (for the first time) a few days before September 1, 1963, "domesticated" as a foreign corporation with the appropriate agency of the State of Oklahoma sufficient to put the plaintiff corporation within the State of Oklahoma within the meaning and purview of the equal protection clause of the 14th Amendment. The right of the plaintiff corporation to engage in the liquefied petroleum gas business in Oklahoma depends upon the issuance of the said annual registration permit by the State of Oklahoma, as provided by its laws. When there are both general laws and special laws relating to the right of a foreign corporation to do business within a state, the special laws are controlling and must be complied with. St. Louis Ry. Co. v. Commercial Ins. Co., 139 U.S. 223; Central Life Assurance Society v. Tiger, 117 Okl. 108, 57 F. 2d 1182.

Plaintiff urges the case of City of St. Paul v. Dalsin (Minn. 1955) 71 N.W. 2d 855, as being decisive herein. This case is clearly distinguishable from the situation at bar. In St. Paul the Court was concerned with an individual who was a citizen of Minneapolis, Minnesota, and within the State of Minnesota complaining about a St.

Paul, Minnesota, ordinance which imposed conditions on him not required of other individuals who were non-residents of St. Paul. Here, we are concerned with a foreign corporation, not within the state, but desiring to enter and do business within the state but unable to comply with the conditions prescribed and required by the state before such permission is granted.

With reference to said law denying the plaintiff corporation due process of law, it is clear from the authorities that a state may entirely bar a foreign corporation from doing business in the state. See The Lafayette Ins. Co. v. French, 18 How. 404, 15 L. Ed. 451; The Horn Silver Mining Co. v. The People of the State of New York, 143 U.S. 305, 36 L. Ed. 164; Hanover Fire Ins. Co. v. Carr, 272 U.S. 494, 71 L. Ed. 372; Lincoln Nat. Ins. Co. v. Read, 325 U.S. 673, 89 L. Ed. 1861. Moreover, a state may impose conditions upon a foreign corporation which must be satisfied before the foreign corporation may do business in the state, provided, the conditions are not repugnant to the Constitution or laws of the United States. See The Lafayette Ins. Co. v. French, supra. The case of Asbury Hospital v. Cass County, North Dakota, supra, provides that the 14th Amendment to the United States Constitution does not deny to a state the power to exclude a foreign corporation from doing business within it. Furthermore, there is not a denial of due process because a foreign corporation permitted to do business in a state acquires property in the state during such privilege and then must dispose of such property later on when new conditions to do business are imposed which cannot be met.

With reference to said law being an interference with interstate commerce, the activities and operations of plaintiff corporation in Oklahoma amount to intrastate commerce and not interstate commerce.

From the evidence adduced it is apparent that plaintiff's over-all operations traverse state boundaries in the transportation and sale of liquefied petroleum gas. The busi-

ness headquarters of plaintiff is in the State of Arkansas. Orders are received and billings sent out from this point. However, plaintiff transports its gas from Arkansas and places it in storage tanks located in Oklahoma. Said gas is subsequently sold and delivered to Oklahoma consumers as it is needed. Upon reaching these storage tanks in Oklahoma the interstate aspect of the operation ends. The subsequent sale and movement of the gas is an intrastate activity and a purely local business clearly subject to local business controls. See 60 A.L.R. 1479, section e; Fletcher Vol. 17, section 8410, and cases thereunder. That local liquefied petroleum gas operations is such an activity over which the local authorities may prescribe appropriate regulations is not to be seriously questioned. The gas stored by plaintiff in Oklahoma has come to rest in a place wherein it is to be used or finally disposed of. Property so situated undoubtedly may be taxed by the state wherein it is located though in the current of interstate commerce. Minnesota v. Blasius, 290 U.S. 1; 78 L. Ed. 131. The purely local nature of the activity here in question is evident. A state may regulate matters of local concern over which Federal authority has not been exercised even though the regulation has some impact on interstate commerce, provided, that the regulation does not discriminate against or place an embargo on interstate commerce, that it safeguards an obvious state interest and the local interest outweighs whatever national interest there might be in the prevention of state regulation. Cities Service Gas Co. v. Peerless Oil and Gas Co., et al., 340 U.S. 179, 95 L. Ed. 190. As viewed by this Court the storage and sale of liquefied petroleum gas in Oklahoma is an intrastate activity carried on by a foreign corporation therein and a matter of local concern. The regulation of such industry and activity is a proper exercise of the state's power. Should, however, the over-all operation, considering that there are present interstate aspects, be sufficiently impressed with the interstate quality so as to retain such status—as relates to the functions within Oklahoma—it is felt that the

regulations imposed are not an unreasonable burden upon interstate commerce and that the local nature of the activity and the obvious state interest outweighs the national interest as is envisioned by the commerce clause of the United States Constitution. Panhandle Eastern P. L. Co. v. Michigan Public Service Comm., 341 U.S. 329, 95 L. Ed. 993 There is no absolute prohibition here of interstate commerce nor an embargo against it. The regulations are a reasonable control of a matter of a local nature and of local concern.

With reference to the last ground of attack, namely, that said law amounts to an abuse of the police power of the State of Oklahoma, the Court fails to find that this principle of law is involved in the facts of this case. We are here confronted with a situation concerning the right of a state to bar a foreign corporation from doing business within it or impose conditions to be met prior to the exercise of such privilege. Since the state may entirely bar a foreign corporation from doing business within its confines it naturally follows that a state may impose any conditions it sees fit, provided the Constitution and laws of the United States are not violated. The United States Supreme Court said in Paul v. Virginia, 8 Wall. 168:

> "Having no absolute right of recognition in other states, but depending for such recognition and enforcement of its contracts upon their assent, it follows as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely, they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion."

We have shown above that the privileges and immunities clause, the equal protection of the laws clause, the due

process of law clause, and the interstate commerce provisions of the United States Constitution and laws, are not violated. The police power of the state is simply not here involved. The exercise of police power by a state is aimed at the conduct, activities and operations of people within the state in the interest of the health, welfare and safety of the people of the state in general. If the plaintiff corporation were permitted to enter Oklahoma and engage in the liquefied petroleum gas business therein under a registration permit, then the plaintiff corporation would be subject in its operation to comply with the pertinent laws, rules and regulations prescribed by the State of Oklahoma in the exercise of its police power in regulating the liquefied petroleum gas industry within its borders. The plaintiff corporation since September 1, 1963, has ceased to be subject to the police power regulations of Oklahoma save only by the temporary restraining order of this Court entered to hold the status quo and not to grant any permanent rights to the plaintiff corporation.

In view of the foregoing, the Court finds that Title 52 O.S.A. 420.14 is valid and constitutional as applied to the plaintiff corporation. Accordingly, the Complaint herein should be dismissed and the temporary restraining order held in effect herein by agreement should be dissolved. Counsel for the defendants will prepare a judgment to such effect for the signature of the Court and entry herein.

Dated this 17th day of February, 1964.

s/ JOHN C. PICKETT
John C. Pickett
United States Circuit Judge

s/ LUTHER BOHANON
Luther Bohanon
United States District Judge

s/ FRED DAUGHERTY
Fred Daugherty
United States District Judge

Judgment

The above entitled and numbered cause coming on to be heard on the merits on the 1st day of November, 1963, at 9:30 a.m., pursuant to order of the Court, said plaintiffs being present by its attorney, David M. Thornton, the defendants, by Lee W. Cook, Assistant Attorney General of Oklahoma, and intervenor, by its attorney, Duke Duvall, and the Court having heard the facts stipulated by all parties, the evidence and arguments of counsel, and upon due consideration of the briefs filed herein and being fully advised in the premises, finds that the plaintiff should be denied the relief prayed for in its complaint, it is therefore,

ORDERED, ADJUDGED AND DECREED, that Senate Bill No. 122 of the 1963 Oklahoma Legislature, officially designated as 52 O.S. Supp. 1963, § 420.14, is valid and constitutional as set forth in the Court's memorandum opinion filed herein on the 17th day of February, 1964; that the complaint filed herein is hereby dismissed and the temporary restraining order heretofore entered and held in effect by agreement of counsel is hereby dissolved.

Dated this 16th day of April, 1964.

s/ JOHN C. PICKETT
John C. Pickett
United States Circuit Judge

s/ LUTHER BOHANON
Luther Bohanon
United States District Judge

s/ FRED DAUGHERTY
Fred Daugherty
United States District Judge

Approved as to Form:

s/ DAVID M. THORNTON
Attorney for Plaintiff

s/ LEE W. COOK
Attorney for Defendant

s/ DUKE DUVALL
Attorney for Intervenor

Judgment Entered in Civil Docket on April 16, 1964

s/ ADELAIDE HOSLSTON, Deputy

Order Overruling Plaintiffs' Motion For New Trial

Upon consideration of plaintiffs' Motion for a New Trial and supporting brief and the answer brief filed to said Motion by the defendants, the Court is of the opinion that said Motion for New Trial should be denied.

It is, therefore, ordered that the plaintiffs' Motion for New Trial is denied and the order s ying execution of judgment entered herein by the Court under date of April 16, 1964, is vacated and of no further force and effect.

Dated this 12th day of June, 1964.

s/ JOHN C. PICKETT
John C. Pickett
United States Circuit Judge

s/ LUTHER BOHANON
Luther Bohanon
United States District Judge

s/ FRED DAUGHERTY
Fred Daugherty
United States District Judge

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FILED
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JOHN F. DAVIS, CLERK

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 390

OZARK BUTANE COMPANY, INC., a Corporation of the State of Arkansas,
Appellant,

VERSUS

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD and W. D. RUSH, Liquefied Petroleum Gas Administrator,
Respondents.

ON APPEAL FROM UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

MOTION TO AFFIRM

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LEE W. COOK
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Oklahoma City, Oklahoma

Attorneys for Respondents

September, 1964.

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-8780

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In the
Supreme Court of the United States

OCTOBER TERM, 1963

No. .....

OZARK BUTANE COMPANY, INC., a Corporation of the State of Arkansas,
Appellant,

VERSUS

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD and W. D. RUSH, Liquefied Petroleum Gas Administrator,
Respondents.

ON APPEAL FROM UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(c) of the Revised Rules of this Court, the above-styled respondents move that the judgment of the District Court be affirmed on the ground that the questions raised by appellant are so unsubstantial as not to warrant further argument.

STATEMENT OF THE CASE

This is a direct appeal from the judgment of a statutory three-judge Federal Court entered April 16, 1964, pursuant to a memorandum opinion dated February 17,

1964, which considered 52 O. S. Supp. 1963, § 420.14. The court determined that said statute was valid and constitutional as applied to the appellant corporation and directed the complaint filed therein be dismissed and the temporary restraining order be dissolved.

The Oklahoma statutes pertaining to the liquefied petroleum gas business are found at 52 O.S. 1961, § 420.1 through § 420.13. Section 420.4 thereof, immaterially amended by the 29th (1963) Oklahoma Legislature, pertains to the required annual registration permit and provides that each registration permit shall expire on September 1 of each year. 52 O.S. Supp. 1963, § 420.14, of which appellant complains, pertains to the aforementioned annual registration permit. Oklahoma Senate Bill No. 122 is found in the Oklahoma Session Laws 1963 at Chapter 27, page 28. This Senate Bill contained the emergency clause and became effective on March 26, 1963, when it was approved and signed by the Governor of Oklahoma, same being codified as 52 O.S. Supp. 1963, § 420.14.

On July 25, 1963, Ozark Butane Company, Inc., an Arkansas Corporation, filed a complaint in the United States District Court for the Western District of Oklahoma wherein it asserted that 52 O.S. Supp. 1963, § 420.14, was unconstitutional. Pursuant to the court's retraining order, appellant was permitted to continue its local business within Oklahoma. The annual registration permit issued to appellant September 1, 1962, for the business year of 1962-1963, expired under its own terms September 1, 1963. The issuance or renewal of an annual registration permit for the forthcoming business years (1963-1964,

etc.) was subject to the provisions of 52 O.S. Supp. 1963, § 420.14, which, as noted previously, became law March 26, 1963. The matter was submitted to the District Court on its merits November 1, 1963. The court's memorandum opinion was issued February 17, 1964, judgment thereon being entered April 16, 1964. Appellant submitted its Motion for a New Trial and same was denied June 12, 1964.

Upon considering the facts of this case on its merits, the United States District Court for the Western District of Oklahoma found that since September 1, 1963, appellant has not been within the jurisdiction of the State of Oklahoma, within the meaning and purview of the 14th Amendment, so as to entitle it to the equal protection of the laws. Since said date, appellant corporation has not satisfied the conditions required by Oklahoma for the acquisition of an annual registration permit in order for it to be entitled to enter and engage in the liquefied petroleum gas business within the State of Oklahoma; that appellant's right to engage in said local business within the State of Oklahoma depended upon the issuance each year of the registration permit in accordance with the applicable state laws; that a foreign corporation may be entirely barred from engaging in a local business within a state and it is not a denial of due process if the corporation might be required to dispose of its property within said state when it cannot meet the conditions for acquiring the necessary annual registration permit; that the appellant's business activities within Oklahoma, pusuant to its annual registration permit, was an intrastate activity of a purely local nature and subject to appropriate state regulations.

Appellant acquired all of its liquefied petroleum gas at refineries located in the State of Oklahoma. This gas was then transported to appellant's storage tanks in Siloam Springs, Arkansas, where same was stored and intermingled with other gas located therein. Thereafter, some of the gas was removed from these storage tanks and transported by appellant to its other storage tanks located in various Oklahoma towns where it was again stored and intermingled with other gas being stored therein. The gas remained in these Oklahoma storage tanks until individual orders were received from its Oklahoma cutsomers at some future date, at which time appellant would fill same from the gas stored in the above Oklahoma storage tanks.

ARGUMENT

The appeal from the District Court decision does not present any question of substance which would warrant further argument in this Court. Considering the facts of this case, the points involved in this appeal were settled long ago by this Court. The registration permit, which is referred to in 52 O.S. Supp. 1963, § 420.14, applies only to the purely local intrastate activities, which appellant conducted within the State of Oklahoma, and same has absolutely no application to appellant's acquiring gas in Oklahoma and transporting same in interstate commerce to its storage in Arkansas, nor does same place a prohibition or embargo on interstate commerce. Appellant is not denied the equal protection of the laws or due process, within the meaning and purview of the 14th Amendment.

I

Statute Not in Conflict With Interstate Commerce Clause

The annual registration permit, which is designated in 52 O.S. 1961, § 420.4, and 52 O.S. Supp. 1963, § 420.14, is required for a distributor or retailer of liquefied petroleum gas, such as appellant, who stores or dispenses such gas in this state for use within this state. This registration permit is not required for the appellant to acquire its gas at the Oklahoma refineries and transport same in interstate commerce to its storage tanks in Arkansas.

The Court correctly found that appellant's business activities, being conducted within the State of Oklahoma, were purely an intrastate operation, therefore subject to the registration permit requirements of the pertinent statutes of this state. The interstate feature of appellant's business ended when its liquefied petroleum gas was placed in its storage tanks located in various Oklahoma towns intermingled with other gas stored therein, same being stored there at the pleasure of the owner for the purpose of selling it at some unknown future date pursuant to individual orders from its Oklahoma customers. The aforementioned gas was not stored in the various Oklahoma towns due to the necessity of the journey or safety of the product. The District Court's determination that this was a local intrastate activity is supported by the facts and rules of law set forth in *Minnesota* v. *Blasius*, 290 U.S. 1, 78 L.Ed. 131, 54 S.Ct. 34, and *Independent Warehouse* v. *Scheele*, 331 U.S. 70, 91 L.Ed. 1346, 67 S.Ct. 1062.

A state may regulate matters of local concern over which Federal authority has not been exercised. *Cities*

Service Gas Co. v. *Peerless Oil and Gas Co., et al.*, 340 U.S. 179, 95 L.Ed. 190, 71 S.Ct. 215.

Appellant relies upon *Western Union Telegraph Co.* v. *Kansas*, 216 U.S. 1, 54 L.Ed. 355, 30 S.Ct. 190. Therein the state attempted to tax all the corporation's stock located both within and without the State of Kansas. The Court correctly held that this was a burden and tax on its interstate business and on its property located in another state. It should be noted that the Court stated therein that there would be no objection to a state license tax based on the local business said corporation transacted within the state. The case is clearly distinguishable from the facts at bar.

Appellant also cites *Baldwin* v. *G.A.F. Seelig*, 294 U.S. 511, 79 L.Ed. 1032, 55 S.Ct. 497. The New York act involved therein did not completely prohibit the sale of milk in New York which was acquired in another state as appellant contends. The application of that act was an attempt by New York to determine and control the price that a Vermont milk producer could receive for his milk. The Oklahoma statute involved in this litigation does not prohibit the shipment of liquefied petroleum gas into this state from another state, under the conditions in the *Baldwin* case. This case has no application to the facts involved herein.

Hood v. *Dumond*, 336 U.S. 525, 93 L.Ed. 865, 69 S.Ct. 657, is also relied upon by appellant. The act involved therein was in conflict with the Federal Agricultural Marketing Agreement Act and attempted to forbid shipments of milk out of the state. The parties to this action agreed

that the milk involved was all being shipped out of the state in interstate commerce. A permit to conduct local intrastate business completely within the State was not involved. The Oklahoma statute considered herein does not forbid the shipment of liquefied petroleum gas out of this state. Furthermore, the registration permit referred to therein would not be applicable to such a transaction. This case has no application to the issues herein.

Consideration of the statutes involved herein will reveal same do not exclude nor prohibit appellant from acquiring liquefied petroleum gas in Oklahoma and transporting same in interstate commerce to its storage facilities in Arkansas and such a transaction would not require the annual registration permit in question.

II

Statute Not in Conflict With Equal Protection Clause

Since September 1, 1963, the appellant corporation has not been within the jurisdiction of the State of Oklahoma whereby it could assert rights under the equal protection clause of the 14th Amendment. Appellant has not satisfied the conditions required by the State of Oklahoma in order for it to acquire a registration permit authorizing it to enter and conduct its local liquefied petroleum gas business within the State of Oklahoma for the period of September 1, 1964, to September 1, 1965. The right of this appellant corporation to engage in the liquefied petroleum gas business within the State of Oklahoma depends upon the issuance of the annual registration permit by the proper state agency in accordance with the applicable

statutes. The above statements are in harmony with the District Court's determination and same are amply supported by the facts and rule of law set forth in *Fire Association of Pennsylvania* v. *New York*, 119 U.S. 110, 30 L.Ed. 342, 7 S.Ct. 108. The foreign corporation in that case was also required to obtain a license each year from the state and in discussing same the Court stated (119 U.S. at pp. 119-120, 30 L.Ed. at p. 347) as follows:

> "'The state having the power to exclude entirely, has the power to change the conditions of admission at anytime, for the future, and to impose as a condition the payment of a new tax, or a further tax, as a license fee. If it imposes such license fee as a prerequisite for the future, the foreign corporation, until it pays such license fee, is not admitted within the state or within its jurisdiction. It is outside, at the threshold, seeking admission, with consent not yet given. * * * It could not be of right within such jurisdiction, until it should receive the consent of the state to its entrance therein under the new provisions; and such consent could not be given until the tax, as a license fee for the future, should be paid.'"

A state may entirely bar a foreign corporation from conducting its business within the state. See *Lincoln National Insurance Co.* v. *Read*, 325 U.S. 673, 89 L.Ed. 1861, 65 S.Ct. 1220, and *Horn Silver Mining Co.* v. *The People of the State of New York*, 143 U.S. 305, 36 L.Ed. 164, 12 S.Ct. 403.

It is not a denial of due process because a foreign corporation is permitted to engage in local business activities within a state under an annual permit, acquires property therein during said period, thereafter must dispose

of said property when new conditions to do business therein are imposed which it does not or cannot meet. See *Asbury Hospital* v. *Cass County, North Dakota*, 326 U.S. 207, 90 L.Ed. 6, 66 S.Ct. 61.

Appellant cites *Southern Railway Co.* v. *Greene*, 216 U.S. 400, 54 L.Ed. 536, 30 S.Ct. 287, and *Hanover Fire Insurance Co.* v. *Carr*, 272 U.S. 494, 71 L.Ed. 372, 47 S.Ct. 179, to support its view that once a foreign corporation obtains a permit to conduct its local business within the state, even though it has a permit for only one year and must acquire another one each year for this privilege, the issuance of the very first license gives the foreign corporation citizenship in the state which it does not lose and entitles said corporation to the equal protection of the laws for all future time. Consideration of these cases will reveal they do not support this asserted theory. This Court in the *Lincoln National Insurance Co.* case distinguished the *Hanover* case and stated that the corporation involved therein had an unequivocable license to conduct business within the state. In the *Hanover* case, the corporation was within the jurisdiction of the state at the time the state attempted to tax all of said corporation's insurance business, while a similar domestic corporation was not so taxed. The *Hanover* case is clearly distinguishable. In the *Greene* case, the corporation involved therein was duly licensed and within the jurisdiction of the state at the time it was taxed under a different and more onerous rule than applied to a similar domestic company. Therein the Court stated it was not dealing with a corporation seeking admission to the state nor one having a limited license seeking to renew same. This case is also distinguishable from the case at bar.

Appellant also relies on *Airway Electric Appliance Corporation* v. *Day*, 266 U.S. 71, 69 L.Ed. 169, 45 S.Ct. 12. Therein the foreign corporation was within the jurisdiction of the state at the time it was taxed on all of its authorized stock, only a small portion of which had been issued. The Court held that the number of unissued shares had no relation to the privilege held by the corporation in Ohio as the unissued shares may never be issued or may be issued to do business in other states. Furthermore, the tax therein on all authorized stock was deemed to be a direct burden on interstate commerce. This case is not applicable to the situation at bar.

III

Appellant May Resort to Federal Courts

Appellant admits that it did not submit this theory to the court when the issues were considered on the merits. However, as appellant submitted this theory in detail to the Court in its Motion for New Trial, we will assume the Court considered same and rejected it by denying appellant's motion. Therefore, we will consider same in this Motion to Dismiss.

Appellant contends that 52 O.S. Supp. 1963, § 420.14, will destroy its foreign character and in support of this contention cites *Harrison* v. *St. Louis and San Francisco Railroad Co.*, 232 U.S. 318, 58 L.Ed. 621, 34 S.Ct. 333; *Donald* v. *Philadelphia and Reading Coal and Iron Co.*, 241 U.S. 329, 60 L.Ed. 1027, 36 S.Ct. 563; and *Terral* v. *Burke Const. Co.*, 257 U.S. 529, 66 L.Ed. 352, 42 S.Ct. 188. Consideration of these cases will reveal that in each in-

stance the state statute expressly provided for the revocation of a foreign corporation's license to conduct local business within the particular state should the foreign corporation institute a suit in a federal court, or remove an action to the federal court, which involved a citizen of the state.

52 O.S. Supp. 1963, § 420.14, has absolutely none of the restrictions or prohibitions which are contained in the statutes involved in the aforementioned cases. The Oklahoma statute under consideration does not even faintly resemble any of the statutes considered in the above cases. The rules of law expressed in the above cases are well recognized, when applied to statutes such as those involved therein, but they have absolutely no relationship to the Oklahoma statute herein nor to the facts in this case.

CONCLUSION

For the reasons stated above, the questions presented by this appeal are unsubstantial and have been determined by previous decisions of this Court. The judgment of the District Court should accordingly be affirmed.

Respectfully submitted,

CHARLES R. NESBITT
Attorney General of Oklahoma

LEE W. COOK
Assistant Attorney General
State Capitol
Oklahoma City, Oklahoma

Attorneys for Respondents

September, 1964.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 390

OZARK BUTANE COMPANY, INC.,
a Corporation of the State of Arkansas, *Appellant*

V.

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD
and W. D. RUSH,
Liquefied Petroleum Gas Administrator, *Respondents*

On Appeal from the United States District Court for the Western District of Oklahoma

BRIEF OPPOSING MOTION TO AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 390

OZARK BUTANE COMPANY, INC.,
a Corporation of the State of Arkansas, *Appellant*

V.

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD
and W. D. RUSH,
Liquefied Petroleum Gas Administrator, *Respondents*

BRIEF OPPOSING MOTION TO AFFIRM

Pursuant to Rule 16, Paragraph 3 of the Revised Rules of this Court, the appellant moves that the Motion to Affirm filed by respondents be overruled on the ground that the appeal presents important constitutional questions. The precise points in issue have not been settled by this court, but, based upon fundamental principals heretofore enuniciated in the decisions of this court, it is believed that the application of 52 O.S. 420.14 to Ozark Butane Company, Inc., under the facts set forth in the record of the case, is clearly in violation of the Constitution and Statutes of the United States.

STATEMENT OF THE CASE

The statement of appellant's case is set forth at pages 1 through 9 of the Jurisdictional Statement and is re-asserted herein by reference. Each and every allegation by respondents in conflict therewith is denied unless specifically hereinafter admitted.

Regarding the last sentence of respondents' statment of their case, the record will show that orders are received from Oklahoma, Missouri and Arkansas customers rather than from Oklahoma customers only, and that in filling such orders from Oklahoma storage that some deliveries are made from a single truck load to the various destinations within and without Oklahoma.

ARGUMENT

The argument of appellant is set forth in the Jurisdictional Statement, under the heading "The Questions are Substantial," beginning at page 9, and is re-asserted herein by reference. Each and every allegation of respondents in conflict therewith is denied unless specifically hereinafter admitted.

The first paragraph of respondents' argument contains an important omission of fact and of issue. The second sentence asserts that the registration permit required by 52 O.S. 420.14 "has absolutely no application to appellant's acquiring gas in Oklahoma and transporting same into interstate commerce to its' storage in Oklahoma." But it fails to say that the transportation of one-third of such gas by appellant back across the state line into the Oklahoma storage of appellant or direct to commercial plants at Jay, Stillwell and Proctor, Oklahoma is likewise transportation in interstate commerce and is clearly prohibited by the language of 52 O.S. 1961 420.4, to-wit:

"Nor shall any transporter, distributor or retailer of L.P.G. store, dispense and/or transport over the highways of this state any L.P.G. intended for use in this state."

When this omission is supplied 52 O.S. 420.14 clearly places an enbargo upon interstate commerce at this point in the conduct of appellant's business without further consideration as to the subsequent movement of the gas by appellant.

Mere assertion of the attorney for respondents in the lower court that 52 O.S. 420.14 was not aimed by the state legislature at bringing the gas back into Oklahoma does not save the statute from being unconstitutional. The full text of paragraph A of 52 O.S. 420.4 is set forth as follows:

"No person, firm, or corporation shall hereafter engage in this State in the business of manufacturing, fabricating, assembling, or installing any systems, containers, apparatuses, or appliances used or to be used in this State in or for the transportation, storage, dispensing, or utilization of L.P.G., nor shall any transporter, distributor or retailer of L.P.G. store, dispense, and/or transport over the highways of this State any L.P.G. intended for use in this State in any such system, container, apparatus or appliance, without having first applied for and obtained a registration permit to do so; provided, that, except as otherwise provided in sub-paragraph (c)(3) hereof, no such permit shall be required by an individual engaged in any of said businesses solely as an employee of a duly qualified registrant, or by any person, firm or corporation engaged in the production or manufacture of L.P.G., and/or selling or reselling L.P.G. to transporters, industrial consumers, processors, distributors and/or retailers, or by any person, firm or corporation selling or delivering motor vehicles or tractors which are factory equipped with an L.P.G.-Gas system, container, apparatus or appliance for the utilization therein of L.P.G. as motor fuel. Applications for registration permits shall be in writing, on a form provided

by the Board, and shall contain such pertinent information as the Board shall require. Upon approval of each such application as hereinafter provided in subsection (d) and receipt of the certificates of insurance required under subsections (f) and (g) hereof, unless waived as hereinafter provided, the administrator shall issue to the applicant a nontransferable permit to engage in the phase of the liquefied petroleum gas industry in this State to which such permit applies until the same shall expire, or shall be suspended or revoked, as hereinafter provided."

Topic I of respondents' argument (page 5) asserts that the interstate feature of appellant's business ended when the L.P.G. gas was placed in its storage tanks in Oklahoma (this admits that the second leg of the journey for the gas is interstate commerce but omits any reference thereto of any applicability or non-applicability thereto of 52 O.S. 420.14) and then postulates as did the lower court that the only business activity of appellant affected by said statute was the movement of the gas from appellant's storage in Oklahoma to its customers in Oklahoma and that such activity is wholly intrastate commerce. No mention is made of the fact, as previously pointed out, that some of the gas stored in Arkansas moves directly to commercial plants in Oklahoma and that some of the gas moved from Oklahoma storage goes to Arkansas and Missouri customers.

This abrupt division between interstate commerce, into appellant's storage in Oklahoma and intrastate commerce out of such storage is based by respondents upon the law established by *Minnesota* v. *Blasuis,* 290 U.S. 1, 78 L.Ed. 131, 54 S.Ct. 34 as cited in their brief at page 5. Said case does not support the division between interstate and intrastate commerce respondents are attempting to make in case at bar as the question of situs for the purpose of taxation

is not involved. Here the issue is whether appellant as a foreign corporation which has shipped L.P.G. in interstate commerce to storage in Oklahoma for further shipment and sale can be prohibited by the state from making such further shipment and sale to customers along established routes in and through Oklahoma, into Missouri and back into Arkansas. That such L.P.G. is in the flow of commerce between states cannot be questioned and though such commerce might be considered as suspended for the purpose of reasonable taxation on the theory of situs, it cannot under the *Minnesota* v. *Blasuis* case (or the Bacon case cited therein) be considered as ended so that the state can prohibit further shipment and sale by appellant as aforesaid.

The *Independant Warehouse* case, 331 U.S. 70, 91 L.Ed. 1346, 67 S.Ct. 1062 cited by respondents along with the above case cites the *Minnesota* case as its controlling authority and considers the issue of interstate commerce for the purpose of local nondiscriminatory taxation only and for the same reason is likewise distinguished from the case at bar.

Appellant has cited *United States* v. *Swift & Co.*, 122 Fed. 529 (1903) as controlling the definition of interstate commerce under the facts of the present case, for here we have a combination of independent Oklahoma L.P.G. dealers acting through their state legislature in an attempt to prevent appellant from shipping L.P.G. in a constantly recurring course of business activity reaching from Oklahoma to Arkansas, back into Oklahoma, into Missouri and back into Arkansas. This current of interstate commerce has been in existance for 17 years. Respondents did not attempt to distinguish this case in their Motion to Affirm. The shipment out of appellant's storage in Oklahoma is certainly a part of the current of interstate commerce within such definition.

The respondents have further cited *Cities Service Gas Co.* v. *Peerless Oil and Gas Co., et al.*, 340 U.S. 179, 95 L.Ed. 190, 71 S.Ct. 215, in support of their position. Appellant's have not questioned the authority of a state to reasonably regulate interstate business where the Federal Government has not yet acted but assert that the regulations imposed by the state either prohibit interstate commerce altogether or by their necessary operation and effect amount to an unreasonable burden upon interstate commerce.

The respondents have attempted to distinguish *Western Union Telegraph Co.* v. *Kansas*, 216 U.S. 1, 54 L.Ed. 355, 30 S.Ct. 190, cited by appellant at page 10 of its Jurisdictional Statement. Appellant asserts that the effect of this case is much broader than is indicated by respondents. In it the court recognizes many principals previously decided which control issues in this case. One of these principals is cited by appellant at page 10 above mentioned. This case also holds that a state may not as a condition of doing purely local business require a foreign corporation to surrender rights belonging to it under the Constitution of the United States. One of such rights being the privilege of a foreign corporation to carry on interstate commerce.

Respondents also attempt to distinguish *Baldwin* v. *G.A.F. Seelig*, 294 U.S. 511, 79 L.Ed. 1032, 55 S.Ct. 497 cited by appellant at page 10 of its Jurisdictional Statement. Regarding respondents' comments thereon, it is noted that the New York Statute involved does completely prohibit the sale of Vermont milk unless the price paid for it to the farmers of Vermont is less than would be owing in like circumstances to farmers in New York.

The case at bar prohibits transportation, storage and dispensing. The New York case prohibits sale. These cases

are analogus in that both involve an attempt by the state to save local businesses from competition from legitimate interstate commerce.

Respondents attempt to distinguish *Hood* v. *Drummond*, 336 U.S. 525, 93 L.Ed. 865, 69 S.Ct. 657 cited by appellants at page 10 of its Jurisdictional Statement. Like the case at bar, this is another instance where a statute was designed to protect local interests by eliminating competition from interstate commerce. The *Hood* case holds very clearly that neither the Power to Tax or the Police Power of the State may be used by the state of destination with the aim and effect of establishing an economic barrier against competition with products of another state and that restrictions so contrived are an unreasonable burden on interstate commerce. Appellant submits that it is wholly immaterial whether such restriction is imposed on goods going out of the state. going through the state or entering the state. The effect is the same.

Regarding topic II of respondents' argument on equal protection (page 7), appellant asserts that at the time 52 O.S. 420.14 was passed appellant was within the jurisdiction of the state and in full compliance with the laws for admission to the state, that it had acquired large amounts of property by authority of and in compliance with the laws of Oklahoma, that it was subject to the jurisdiction of the courts of Oklahoma, that it has paid taxes on its property, and under the state law had the same right to renew its license as did other foreign corporations engaged in the L.P.G. business in Oklahoma. That upon passage of 52 O.S. 420.14 appellant and others having laws dissimilar to the L.P.G. laws of Oklahoma were deprived of the right to a renewal license, whereas other foreign corporations chancing to come from states having no L.P.G. laws or L.P.G. laws similar to Oklahoma retained their right to a renewal license.

That appellant was a person within the state of Oklahoma and entitled to equal protection of the law at the time 52 O.S. 420.14 was passed is unquestioned. That said statute unequally deprived appellant of the right to obtain a renewal license cannot be questioned. This is the hand of discrimination the *Southern Railway* v. *Greene,* 216 U.S. 400, 54 L.Ed. 536, 30 S.Ct. 287, case cited by appellants speaks of when it states that the equal protection clause was designed to prevent a single class of persons from being singled out as a special subject for discriminatory and hostile legislation.

The *Hanover Fire Insurance* v. *Carr* case, 272 U.S. 494, 71 L.Ed. 372, 47 S.Ct. 179, cited by appellant states that any attempt of a state to vary the terms of the original license, as a condition for renewal, which involves a deprivation of Federal Constitutional rights cannot be effective; that after admission the foreign corporation stands equal with corporations similarly situated and is entitled to equal protection of the law.

In the *Hanover* case, the state tried to support its unequal tax on the grounds that it was a condition for the continuance of business activities in the state. The state reasoned that since it could impose unequal conditions for admission that it could impose like conditions for renewal. The court said this is not so, once a foreign corporation is admitted to the state and is in full compliance with the laws of admission such corporation is a person within the state and entitled to equal protection. The license of the insurance company in this case had to be renewed each year.

Respondents cite the *Lincoln National Insurance Co.* v. *Read* case, 325 U.S. 673, 89 L.Ed. 1861, 65 S.Ct. 1220, as distinguishing the *Hanover* case from the case at bar.

The *Lincoln* case is different from both the case at bar and the *Hanover* case and has no application to either. In the *Lincoln* case the state admitted the corporation on the express condition that it agreed to pay for renewal such tax as Oklahoma might later impose. Failure to pay the tax was failure to comply with the original condition for admission to the state. In the case at bar and in the *Hanover* case there was full compliance with the original conditions for admission to the state. The issue in these cases is the right of a state to impose unequal conditions for the *renewal* of a license, not for the granting of a license.

Respondents rely entirely upon *Fire Association of Pennslyvania* v. *New York*, 119 U.S. 110, 30 L.Ed. 342, 7 S.Ct. 108, in its argument on equal protection. This case was decided in 1886. The case turns upon the rationale that corporations are not persons within the meaning of the equal protection clause of the 14th Amendment of the United States Constitution. It considered the line of cases which had already decided that corporations are entitled to the protection of the Interstate Commerce clause, but reasons that since insurance is not interstate commerce that this precedent does not apply. Insurance has subsequently been considered to be interstate commerce.

It is submitted that the dissent of Justice Harlon J in the above case, holding that corporations are persons within the state upon their admission to a state and are entitled to equal protection, has now become the law under the *Hanover* case as distinguished on fact but not on law in the 1945 *Lincoln* case.

Regarding topic III of respondents' argument (page 10), appellant submits that the court must look through the form of 52 O.S. 420.14 to its necessary operational effect.

Appellant, a foreign corporation with its principal place of business in Arkansas, cannot obtain a permit unless it moves its principal place of business from Arkansas to Oklahoma. When it does this it loses its diversity of citizenship for the purpose of Federal Jurisdiction and is subject solely to the jurisdiction of the state court unless a federal question is involved. Appellant asserts that this condition requires the surrender of the right of foreign corporations to pursue causes in the Federal Courts as completely as if the statute expressly provided for the revocation of a foreign corporation's license should the corporation remove an action to the Federal Courts which involved a nonresident and a citizen of the state. 52 O.S. 420.14 should, therefore, be declared unconstitutional as requiring the surrender of the right of a foreign corporation to pursue causes in the Federal Courts.

CONCLUSION

For the reasons above stated the questions presented are substantial and are of public importance. It is respectfully submitted that probable jurisdiction should be noted.

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